Record/FILE ON DEMAND

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**In the NEW YORK DISTRICT Court for the**

**DISTRICT of NEW YORK at Common Law**

| | |
|---|---|
| **Mario E. Castro, et al.,**<br><br>v.<br><br>**THE BANK OF NEW YORK MELLON, as Trustee for the Certificate Holders of CWALT Inc., Alternative Loan Trust 2006-0A11 mortgage pass-through certificates 2006-0A11, f/k/a THE BANK OF NEW YORK MELLON, ALTERNATIVE LOAN TRUST 2006-0A11; UNKNOWN Doe's 1-12,000 et al…**<br><br>**SHELLPOINT MORTGAGE SERVICING, UNKNOWN Doe's 1-12,000 et al…** | **Case Number: 17-cv-4375-JS-GRB**<br><br>**Second Amended Complaint - Civil Suit at Common-Law, Denial of Due Process, Breach of Fiduciary Duty of Care, violations of the Fair Debt Collection Practices Act, Fair Credit Reporting Act, Public Policy, RESPA, NEW YORK TRUST LAWS, and that New York Debt Collection procedural statutes, New York Organic Constitution common Law "Trial by Jury" demanded, Permanent Injunction, Declaratory Judgment Request, Evidence introduction in the form of an affidavit which if Un-rebutted must stand as true.** |

## I. Foundational premises for Suit -Introduction:

"An affidavit: EVIDENCE FOR THE RECORD OF THE AFORMENTIONED MATTER"

An irrevocable TRUST AGREEMENT in the form of a lawsuit:

1. NOW COMES, the above named **PLAINTIFF's,** as Sui Juris litigant's, without the assistance of ATTORNEY, by exercise of the right to contract and refusing to consent or appear, does RECORD this Emergency Motion/Complaint in Trover…. Which Enjoins the DEFENDANT's from any active Foreclosure and/or Auction and/or Possession proceeding as against any Quasi Judgment which may lead to an illegal Sale of property.

2. The Plaintiffs, **Mario E. Castro, the Beneficiary of the MARIO E. CASTRO ESTATE, THE MAGDALENA D. CASTRO ESTATE, ET AL.,** stand before this body seeking redress for damage caused by the defendants. They have exhausted their administrative remedies, in fact they are making a claim of gatekeeping against the defendants, who have each and every one of them failed to respond and or sufficiently respond to more than 2 different communications over the course of 60 plus days.

3. This presentment is attested as accurately depicting the facts associated with this matter, based on firsthand knowledge of the information contained herein, is declared, ascribed, sworn as such and required by the principles of an affidavit.

4. This suit is presented at Common-Law as authorized by the Constitution for the Great State of **New York**. We grant neither leave nor permission to construe this in any other fashion than "Original Jurisdiction", and remind this body that the rules of equity dictate that this body cannot reward a wrongdoer. That simply means, knowing this matter is placed before this Court under its Original Jurisdiction authority, i.e. Common-Law, that such precludes/prohibits the court and/or its staff from assigning this matter to any differ jurisdiction other than that of Common-Law.

5. We present before this body the fact that its Officers have been elected and/or appointed Office, and thus took a solemn Oath to uphold the principles of the Constitution for the United States of America and the Great State of **New York**, and in doing so they are bound by that Oath as long as they operate under the authority of that Office. We remind this body and its officers whether attorney, Deputy, judicial or otherwise of their fiduciary duty, the public trust for which we re-establish at this moment, binding all parties to that trust agreement and the other associated trust agreements. This is a self-executing notification/agreement if you disagree with this agreement and the environment of this presentment, you must contest within 100 calendar days from the date of receipt via binding arbitration. Your failure to contest within 100 calendar days will equate to your acknowledging the trust agreements and of your fiduciary responsibilities to said agreement.

6. Often times when recording the suit individuals go through a great deal trying to articulate their intentions, we will make no such efforts here. Under the rules of common-law the only thing we have to do is exercise our right and explain our intentions within the scope of ***Common-Law*** rules. The court rules are inapplicable in this instance as they conflict would common-law rules. The courts internal rules are objected to as they conflict with ***Common-Law*** rules. The courts administrative policies are objected to as they conflict with ***Common-Law*** rules. The courts practices and engagements in commercial business strips it of sovereign capacity, if the court chooses to ignore our rights at ***Common-Law*** we exercise our right and **HEREBY challenge** the court's jurisdiction and have it prove that this matter is

not associated with **CRIS**, and that this matter is not being co-mingled with commercial business. We do not consent to having our rights ignored, and as will be explained later **Judicial** officers in the federal courts are under oath of office, which means all under conduct while operating under office is under oath, and any violation of that oath strips the court officer of juris, and makes that official liable as the protections of the office and the immunities associated thereto do not carry over. We hereby place any official associated with this matter on notice and hold them to their oath of office, and further obligate them under said oath as if they speak or act, they do so under that oath.

**7.** The Trust Agreement is hereby restated, and that agreement is binding on all parties, the beneficiaries of the agreement are the plaintiffs, the trustees of the agreement are the defendants and "the court" is appointed as fiduciary. We hereby incorporate and attach the Internal Revenue Service form 56 "fiduciary appointment" by reference and we hereby authorize the fiduciary to perform any and all functions to the benefit of the beneficiaries and the fulfillment of the obligations of the trust. The duties of the trustee are hereby reassigned to the fiduciary and its officers, whom shall be duty-bound to assure that the rights of the beneficiaries are fully exercised and their interests not infringed upon by any party.

**8.** Failure of any of the parties of the trust agreement to carry out their duties with respect to the trust agreement shall result in obligatory binding arbitration, which shall commence no later than 100 calendar days from said breach, and any party failing to commit to binding arbitration and/or the orders of the arbitrator shall immediately forfeit any and all rights and be in immediate default with full liability and recourse. The trust agreement is coupled with interest, and because of this coupling with interests the trust agreement remains in full effect despite any presumed altercations, amendments, quasi and or adhesion contracts, and the fiduciary as well as all other parties shall recognize the having attained the age of majority, and the dis-affirming of all contracts made during infancy by the plaintiffs.

**9.** The trust agreement Is a **Common-Law Trust** conforming with and to the rules of **Common-Law**, and this agreement must remain in conformity with the Declaration of Independence, The Northwest Ordinance, and the Bill of Rights embedded within the Constitution of the United States of America.

**10.** The fiduciary is hereby commanded to remain in the role of Officer of the **Judicial** Branch of Government of the Constitution of the United States of America and the State of **New York**. Failure of the fiduciary to carry out the roles as prescribed in the trust agreement and within the framework of this binding self-executing contract (**contract no.** MEC-1203BNYM-SPMS0312-BNYM1SMS2©) shall result in automatic disqualification, and breach of fiduciary duty of care criminal claim being lodged against that party and the court for which it represents. The fiduciary no matter the capacity shall remain forever

bound by this agreement for as long as this matter remains unfulfilled, and shall be liable for any delays and/or denials of due process and or failure to heed the rules of Common-Law and or Damage associated thereto.

**11.** By assignment the fiduciary submits to the constraints of the agreement, and thus must put the Declaration of Independence, The Northwest Ordinance, and the Bill of Rights embedded within the Constitution of the United States of America and the interests of the beneficiaries i.e. the plaintiff's ahead of the interests of the court, and when the courts interests conflict with the interests of the beneficiaries aforementioned, the fiduciary shall have full indemnification for carrying out the tenants of the agreement, when putting the interests of the aforementioned beneficiaries in the forefront, protecting and shielding said interest against infringement, encroachment, and or indifference.

**12.** The trust agreement holds that the beneficiaries of the plaintiff **ESTATES** are the natural persons for whom they are named and or their heirs, that the fiduciaries are the public servants/officers/ agents/deputies, and the grantors of the agreement are the People of the great State of **New York** and the parties named as plaintiffs in this presentment respecting the instant matter.

**13.** If any party should breach this agreement they will be liable for damages three times that of the original claim, plus administrative fees, service fees, legal fees and awards.

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## A. Authorities:

a. Section 3-603 of the Uniform Commercial Code (Code) (810 ILCS 5/3-603 (West 2004))

b. Guaranty Trust Co. of N.Y. v. Henwood 307 U.S. 247, 59 S. Ct. 847, 83 L. Ed. 1266 (1939).

c. McElroy, 134 Cal. App. 4th at 392, P.3d 36 Cal. Rptr. 3d at 178-79.

d. 3-104 of the Uniform Commercial Code.

e. Krajcir v. Egidi, 305 Ill. App. 3d 613, 621 (1999)

f. Horace v. LaSalle- 57-CV-2008-000362.00 Ill. (2008)

g. (see, United States Trust Co. v First Nat'l City Bank, 57 A.D.2d 285, 295-296, aff'd 45 NY2d 869; Restatement [Second] of Trusts § 186, comments a, d). See In re IBJ Schroder Bank & Trust Co., 271 A.D.2d 322 (N.Y. App. Div. 1st Dep't 2000)).

h. 26 U.S.C.S. § 860D

i. *Please note New York trusts law is hereby incorporated and associated by reference because of the particular nature that most financing institutions set up trust out of the state of New York and thus the common law trusts law for the State of New York and the laws associated thereto/thereof either directly or indirectly, hold sway.

j. As early as 1935, in Burgoyne v. James, 282 N.Y.S. 18, 21 (1935), the New York Supreme Court recognized that business trusts, also known as ""Massachusetts trusts", "are deemed to be common law trusts. See also In re Estate of Plotkin, 290 N.Y.S.2d 46, 49 (N.Y. Sur. 1968) (characterizing common stock trust funds as ""common law trust[s]""). Other jurisdictions are in accord. See, e.g., Mayfield v. First 'Nat'l Bank of Chattanooga, 137 F.2d 1013 (6th Cir. 1943) (applying common law trust principles to a pool of mortgage participation certificate holders).

In order to have a valid inter vivos gift, there must be a delivery of the gift (either by a ""In the case of a trust where there is a trustee other than the grantor, transfer will be governed by the existing rules as to intent and delivery (the elements of a gift)"" In re Becker, 2004 N.Y. Slip Op. 51773U, 4 (N.Y. Sur. Ct. 2004).

k. (see, Matter of Szabo, 10 N.Y.2d 94, 98-99, supra; Speelman v Pascal, 10 N.Y.2d 313, 318-320, supra; Beaver v. Beaver, 117 N.Y. 421, 428-429, supra; Matter of Cohn, 187 App. Div. 392, 395) as cited in Gruen v. Gruen, 68 N.Y.2d 48, 56 (N.Y. 1986). (Matter of Szabo, supra, at p. 98).

l. (id.; Vincent v Rix, 248 N.Y. 76, 83; Matter of Van Alstyne, supra, at p 309; see, Beaver v. Beaver, supra, at p 428) as cited in Gruen v. Gruen, 68 N.Y.2d 48, 56-57 (N.Y. 1986) .n.

m. Brown v. Spohr, 180 N.Y. 201, 209-210 (N.Y. 1904).

n. **Until the delivery to the trustee is performed by the settlor, or until the securities are definitely ascertained by the declaration of the settlor, when he himself is the trustee, no rights of the beneficiary in a trust created without consideration arise** (cf. Riegel v. Central Hanover Bank & Trust Co., 266 App. Div. 586; Matter of Gurlitz [Lynde], 105 Misc 30, aff'd 190 App. Div. 907, supra; Marx v. Marx, 5 Misc 2d 42) as cited in Sussman v. Sussman, 61 A.D.2d 838 (N.Y. App. Div. 2d Dep't 1978).

o. In an action against the individual defendant as trustee, based on the theory of breach of fiduciary obligation, the complaint was properly dismissed on the ground that he had acquired no title or separate control of the goods and, hence, there was no actual trust over the property to breach. Kermani v. Liberty Mut. Ins. Co., 4 A.D.2d 603 (N.Y. App. Div. 3d Dep't 1957).

The Trust documents require that the promissory notes and mortgages be transferred to the Trustee, which under New York trust law requires valid delivery, and we must keep in mind that trust law is uniform. The question then arises — "What constitutes valid delivery to the Trustee?"

Wells Fargo Bank v. Farmer, 2008 N.Y. Misc Lexis 3248.

Courts may neither ignore the actual provisions of transaction documents nor create contractual remedies that were omitted from the governing contracts by the contracting parties. See Schmidt v. Magnetic Head Corp., 468 N.Y.S.2d 649, 654 (N.Y. App.Div. 1983) (""It is fundamental that courts enforce contracts and do not rewrite them . . . An obligation undertaken by one of the parties that is intended as a promise . . . should be expressed as such, and not left to implication."" (citations omitted)); Morlee Sales Corp. v. Manufacturers Trust Co., 172 N.E.2d 280, 282 (N.Y. 1961) (""[T]he courts may not by construction add or excise terms . . . and thereby 'make a new contract for the parties under the guise of interpret[ation].''' (quoting Heller v. Pope, 250 N.E. 881, 882 (N.Y. 1928))

p. AG Capital Funding Partners, L.P. v. State St. Bank & Trust Co., 2008 N.Y. Slip Op. 5766, 7 (N.Y. 2008)
Green v. Title Guarantee & Trust Co., 223 A.D. 12, 227 N.Y.S. 252 (1st Dept.), aff'd, 248 N.Y. 627 (1928);
Hazzard v. Chase National Bank, 159 Misc. 57, 287 N.Y.S. 541 (Sup. Ct. 1936), aff'd, 257 A.D. 950, 14 N.Y.S.2d 147 (1st Dept.), aff'd, 282 N.Y. 652, cert. denied, 311 U.S. 708 (1940).

Meckel v. Continental Resources, 758 F.2d 811, 816 (2d Cir. 1985) as cited in Ambac Indem. Corp. v. Bankers Trust Co., 151 Misc. 2d 334, 336 (N.Y. Sup. Ct. 1991).

United States Trust Co. v First Nat'l City Bank, 57 A.D.2d 285, 295-296, aff'd 45 NY2d 869; Restatement [Second] of Trusts § 186, comments a, d) as cited in In re IBJ Schroder Bank & Trust Co., 271 A.D.2d 322 (N.Y. App. Div. 1st Dep't 2000).

q. Wells Fargo Bank, N.A. v. Farmer, 2008 NY Slip Op 51133U, 6 (N.Y. Sup. Ct. 2008) (cf. Riegel v. Central Hanover Bank & Trust Co., 266 App. Div. 586; Matter of Gurlitz [Lynde], 105 Misc. 30, aff'd 190 App. Div. 907, supra; Marx v. Marx, 5 Misc 2d 42) as cited in Sussman v. Sussman, 61 A.D.2d 838 (N.Y. App. Div. 2d Dep't 1978). Vincent v. Putnam, 248 N.Y. 76, 82-84 (N.Y. 1928).

Phillippsen v. Emigrant Indus.Sav. Bank, 86 N.Y.S.2d 133, 137-138 (N.Y. Sup. Ct. 1948). (Beaver v. Beaver, supra, 117 N.Y. 421, 428, 22 N.E. 940, 941, 6 L.R.A. 403, 15 Am.St.Rep. 531).

Grant Trust & Savings Co. v. Tucker, 49 Ind. App. 345; Furenes v. Eide, 109 Ia. 511; Dickeschied v. Exchange Bank, 28 W. Va. 340; Love v. Francis, 63 Mich. 181; [**428] Merchant v. Building Co. [***15] , 17 Ohio Circuit Ct. 190.)

In re Nat'l Commer. Bank & Trust Co., 257 A.D. 868, 869-870 (N.Y. App. Div. 3d Dep't 1939) citing Vincent v. Rix, supra v. Rix, supra; Bump v. Pratt, 84 Hun, 201.

28(Vincent v. Rix, 248 N.Y. 76, 85 v. Rix, 248 N.Y. 76, 85; Matter of Green, 247 App. Div. 540; McCarthy v. Pieret, 281 N.Y. 407, 409.) as cited by In re FIRST TRUST & DEPOSIT CO., 264 A.D. 940, 941 (N.Y. App. Div. 4th Dep't 1942).

r. Vincent v. Putnam, 248 N.Y. 76, 82-84 (N.Y. 1928)

In re Van Alstyne, 207 N.Y. 298, 309-310 (N.Y. 1913).

In re Van Alstyne, 207 N.Y. 298, 309-310 (N.Y. 1913).

Allison & Ver Valen Co. v. McNee, 170 Misc. 144, 146 (N.Y. Sup. Ct. 1939).

Ambac Indem. Corp. v. Bankers Trust Co., 151 Misc. 2d 334, 336 (N.Y. Sup. Ct. 1991).

s. We must also take into consideration that the Great State of New York is a Common-Law State, and the Great State of Massachusetts is a Common-Law State, and that the recording of mortgages originated in Massachusetts, thus they established the foundation for the recording of such documents. That most of the Financial Institution Trusts' are organized in the State of New York thus the State of New York statute governed.

t. The Constitution for the State of **New York** Is Established under Common-Law, the Common-

Law provisions of that Constitution have not and cannot be suspended. The Judicial Branch of Government for the Great State of **New York** is established under the Original Jurisdiction i.e. Common-Law as ordained by that Sacred Instrument.

The Courts within the boundaries established are directly linked to the Judicial Branch of Government, and there is no provision held out in the Constitution for any other Branch of Government to have established courts whereby the Judicial Power and Original Jurisdiction conferred. In fact, military courts, administrative courts, and legislative courts can never process Judicial Power.

The equal access to Justice, equal access to the Courts are secured rights to be exercised at will, and may not be, cannot be curtailed as to do such would be to deny one the right to petition the Judicial Branch of Government for Redress.

u. Affidavit uncontested unrebutted unanswered Morris vs. NCR, 44 SW2d 433 Morris v National Cash Register, 44 SW2d 433: "An Affidavit if not contested in a timely manner is considered undisputed facts as a matter of law."

## III. Jurisdiction:

15. The defendant (**THE BANK OF NEW YORK MELLON, as Trustee for the Certificate Holders of CWALT Inc., Alternative Loan Trust 2006-0A11 mortgage pass-through certificates 2006-0A11, f/k/a THE BANK OF NEW YORK MELLON, ALTERNATIVE LOAN TRUST 2006-0A11), et al.,** place of business is **Wilmington, Delaware**, which is within the Jurisdiction of this venue because of diversity and the jurisdictional amount. The acts and/or actions by the defendant TRUSTEE was done in representation of **Alternative Loan Trust 2006-0A11 mortgage pass-through certificates 2006-0A11, et. al.**, Assessing and attributing liability for their actions which arose and stem from their offices for which communication was delivered at **WILMINGTON, DELAWARE.**

16. The defendant **SHELLPOINT MORTGAGE SERVICING; et al.**; are registered Corporations and/or have their place of business is in (**Greensville, South Carolina**), which is within the Jurisdiction of this venue because of **diversity** and the **jurisdictional amount**. THIS VENUE/Court has delegated authority via the Constitution for the Great State of **New York**, Original Jurisdiction under the Common Law Clause of the organic Constitution for the Great State of **New York**, and has been authorized by the Supreme Court of the Great State of **New York** to Exercise Original Jurisdiction and Authority in matters at and in law.[t]

17. We hereby invoke our rights under the seventh amendment of the United States Constitution of America to a **Common-Law** court, before a **Common-Law** judge, having **Common-Law** jurisdiction, under the rules of **Common-Law**, and to a trial by **Jury**!

    1. There is no consent granted nor any consent given whereby it could be construed that the

Plaintiffs waive any rights, and/or voluntarily submits, surrenders, and/or waives any rights to any jurisdiction and/or any venue other than that of Common-Law.

**18.** To interfere with the rights to proceed at **Common-Law** would be a restraint on liberty and a subjecting one to servitude in violation of the principles of the **13th article to/for the United States Constitution of America**. Please note that any officer of the court attempts to do so including a **Judicial** officer who remains under oath throughout the tenure of his and/or her and/or their employment shall be subject to a "CRIMINAL CLAIM" being lodged against their persons for such criminal trespass against rights secured by the United States of America Constitution, as such acts would be and shall be construed as bad behavior.

## IV. The Defendants/Respondents

**19.** The following defendants are each being accused of violating the rights of the plaintiff's, slander, defamation, libel, causing, emotional, financial, physical, mental damage as well as harm to the plaintiff's and are each severally and jointly liable in their individual, corporate, legal, lawful, personal and professional capacities. And since there is no authority to violate the rights of a citizen of the great State of **New York**, none of the defendants possessed immunity:

**THE BANK OF NEW YORK MELLON, as Trustee;**
c/o Joseph M. DeFazio/Natsayi Mawere – AKERMAN LLP
666 FIFTH AVENUE, 20TH FLOOR
NEW YORK, NEW YORK, 10103

**SHELLPOINT MORTGAGE SERVICING;**
c/o Joseph M. DeFazio/Natsayi Mawere – AKERMAN LLP
666 FIFTH AVENUE, 20TH FLOOR
NEW YORK, NEW YORK, 10103

**20.** The alleged lender associated with this specific and particular property and associated loan number to include and not to exclude each assignment, servicer, and/or other agent or any agency; has falsely misrepresented the particulars of the loan associated.

**21.** The lenders (all-inclusive) held out that they were lending monies and not credit, in fact nowhere in the loan application and the agreement for qualification was there any mention of the lender lending credit. And thus the borrowers agreed to repay the monies lent, it is only at the present time that the borrowers discovered that there were never any monies as defined by statute lent, this is a violation of several federal laws in particular **THE TRUTH IN LENDING ACT**. We say that the mere fact that the lender did not lend monies as was the understanding and the promise underlying the original contract, they are in breach of the spirit of that agreement, and are due only what was lent, i.e. credit.

**22.** In the realm of contracts, the law requires that the terms be reasonable, and that the terms of the contract be according to the understanding of the parties involved. Nowhere is it to be understood that when a lender who is purportedly a financial institution, governed by the Federal Government, under FEDERAL LAW, under the **Federal Banking Acts**, and the Federal housing acts that the Federal Reserve and or their member banks can lend their credit with respect to home loans. Home loans fall under federal guidelines, nowhere in those federal guidelines when issuing a loan that is guaranteed by the federal government against default, can a financial institution lend its own credit. So the original understanding when the original contract was signed was that the financial institution was lending monies, which is exactly why they listed numerical symbols identifying their intent. We say that if they were not to be lending monies as defined in statute, and please note there is no legal definition for the term cash, cash is not defined in statute, cash is a generic term, and so no cash was ever lent. Monies as defined in statute would be coins or currencies of the United States (June 5th, Act), financial institutions private credit is not currencies of the United States as they are not regulated by the United States Congress, and are not used in the everyday transactions of **the People** of the nation. We have already discussed the fact that Federal Reserve notes although bearing the term legal tender, "have no value", an official statement and stance of the United States Government.

**23.** So one cannot be led to believe that in each of the following instances, the financial institutions associated with the original contract, practicing the same scheme were not attempting to defraud the borrower, to conceal facts not evident in the original agreement, lending no consideration as required under the general principles of contract law, and thus can make no demands for the return of anything more than what was originally agreed, US dollars for US dollars (the definition for US dollars is defined in The Gold Repeal Act, otherwise known as THE ACT OF JUNE 5, 1933)"[g]

## V. STATEMENT OF CLAIMS

**24.** Each of the aforementioned defendants have participated in one fashion, form or another in causing damage, injury to the plaintiff's and have violated public policy respecting demanding payment for debts. All of the claims are proved by the accounting records comprehensive in nature and internal policies and forms maintained by the custodian of records for each of the aforementioned defendants.

**25.** Plaintiff states that since there are claims of constructive fraud in this matter, any defenses of statute of limitations are to be tolled (equitable or otherwise) in any and all aspects of this case from the date of discovery and we hereby incorporate by reference this tolling doctrine in this matter to distinguish any defenses of statute of limitations that may come about as constructive fraud is involved on the

part of the defendants.

**26.** Plaintiff hereby incorporates by reference as part of his claims/relief and an exhibit in his Second amended complaint his **"Plaintiffs Memorandum of Law in Support of Brief"** which is already filed on the record in this case.

**27.** The information, documentation, proof of the conduct of the defendants is also included in the records gathered by the Atty. Gen.'s for the several different states accumulated during their investigation from 2012 to 2016. As well as the guilty pleas by the defendants, attesting to the accuracy of the information contained herein, of how they violated public policy, interstate commerce, and the power of the Congress to regulate the equal power/value for every dollar.

**28.** Having deliberately, willfully, knowingly, and intentionally ignored the administrative procedures act and other laws, failed to follow the administrative process, each of the defendants are in default as having failed to respond to the numerous requests made with respects their obligation to the contracts. Each of these agencies/organizations/institutions are licensed to practice and/or perform business in the jurisdiction of the United States of America, and as such are bound by the **Common-Law** and the rules of **Common-Law** as defined in the Constitution of the **United States of America and article/Amendment 7 of that act.**

**29.** Each of these agencies/organization/institutions are required to maintain at all times mortgage insurance in the course of business with respects to conventional loans. Each one of these agencies organizations and or institutions have committed constructive fraud against the plaintiffs, the public interests, and the United States of America; in that they have purportedly lent monies to the American people, to the public, and did so at interest, lending **Bookkeeping Entry Credit** without having the constitutional authority and/or ability to do so.

**30.** It was decided in a suit at **Common-Law** (please note that **Common-Law** applies to the entire United States of America and not just a so-called district, and the jurisdiction is universal within the borders of the United States and internationally) "Plaintiff brought this as a **Common-Law** action for the recovery of the possession of Lot 19 Fairview Beach, Scott County, Minn. Plaintiff claimed title to the Real Property in question by foreclosure of a Note and Mortgage Deed dated May 8, 1964, which Plaintiff claimed was in default at the time foreclosure proceedings were started.

**31. Defendant appeared and answered that the Plaintiff created the money and credit upon its own books by bookkeeping entry as the consideration for the Note and Mortgage of** May 8, 1964 and

alleged failure of the consideration for the Mortgage Deed and alleged that the Sheriffs sale passed no title to plaintiff.

**32.** We will/shall put forth our position within our statement[s] of claim[s], we highlight the aforementioned case was had at **Common-Law** which is proved by the seventh article of the United States of America Constitution, of which, jurisdiction is to exist throughout the United States, that the case was not had in an administrative court building but in the store basement. By a **Judicial** officer appointed by the Supreme Court of that state at **Common-Law**, which makes that decision binding on this court, and in conjunction with the rules of **Common-Law**.

**33.** We purport that the defendants in this matter, are engaged in the exact same practice as testified under oath by the financial expert witness, that Congress cannot delegate its authority nor can the treasury with respects to currency and/or monies of the United States to any private organization and/or institution, as there is no constitutional provision for doing so. To interfere with the rights to proceed at **Common-Law** would be a restraint on liberty and a subjecting one to servitude in violation of the principles of the **13th article to/for the United States Constitution of America**.

**34.** The Republic state of **New York** is a **Common-Law** jurisdiction, the Constitution recognizing **Common-Law**, the Supreme Court has made it clear that a party must be made aware that a matter is pending and can choose for him or herself whether to appear, to acquiesce, to consent, or to forfeit. - **"Due process requires, at a minimum, that an individual be given a meaningful opportunity to be heard prior to being subjected by force of law to a significant deprivation . . . That the hearing required by due process is subject to waiver, and is not fixed in form does not affect its root requirement that an individual be given an opportunity for a hearing before he is deprived of any significant property interest . . ."** (401 US 378- 379) Randone v. Appellate Department, 1971, 5 C3d 536, 550.

> "In the latter case [Mullane v. Central Hanover Trust Co., 339 U.S. 306] we said that the right to be heard 'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.' 339 U.S. at 314" Sniadach v. Family Finance Corp., 395 U.S. 337, 339, 340

**35.** Each of the defendants having received copies of the several notices that are associated with this matter, sent to them through the United States Postal Service, delivery confirmation. Each of the defendants have failed to respond to the communications, which was documentation disputing the claims of the defendants respecting the properties associated with this matter, each of the defendants are in default with respects to the aforementioned understanding by the United States Supreme Court. Each of the

defendants have acknowledged receipt of the presentments including Shellpoint who have alleged that the presentment went to the wrong address, allegeing the correct address is in the contact section of their website, this statement/averment/argument is objected to in any form or fashion for the reasons stated by the Judge in the order dated **8-30-2018 (document number 19 filed in this case)** and Plaintiff hereby incorporates this statement by reference and the Plaintiff was not properly notified through a "written notice" of the address they have stated on their website, nor does the website include a statement that the Plaintiff must use the established address to request information **(see…document 19 pages 11-12).** The defendant acknowledged receipt of these presentments **(QWR/VALIDATION/VERIFICATION/RESPA/DISPUTE/AFFIDAVIT OF FACT)** by a **preponderance** of evidence, that they have committed themselves to respond and have stated " they were going to respond to the Plaintiff" **(see…Exhibits – A correspondence from Shellpoint)," so there was no need to send a new response otherwise it would have been resent** and they can no longer make this argument as a defense when so much time has passed before and after the default and they have agreed to respond to the presentment and have failed to do so. Plaintiff hereby incorporates all material in his exhibits, presentments, documents, and attached correspondences by reference in this matter. Plaintiff also hereby incorporates by reference any and all statements, conclusions stated by the judges order dated **8-30-2018** that is in the favor of the Plaintiff in regards to RESPA/QWR if for some reason over looked and not already covered in this new amended complaint and Plaintiff objects to the remainder findings by the court that are not in favor of the Plaintiff in this matter.

**36.** Plaintiff states that he is not required to post evidence before the court prior to bringing this matter before the jury. This is the beginning stages of this case, I am not required to layout my entire case. I am only required to give a brief description of what my claims and issues are. The law does not require me to explain the entire case at this time therefore I hereby object to any dismissal when it pertains to this issue. ***See…Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512 (2002); accord Atchison, Topeka & Santa Fe Ry. v. Buell, 480 U.S. 557, 568. n.15 (1987) (under Federal Rule 8, claimant has "no duty to set out all of the relevant facts in his complaint").*** "Specific facts are not necessary in a Complaint; instead, the statement need only 'give the defendant fair notice of what the . . . claim is and the grounds upon which it rests.'" ***Epos Tech., 636 F. Supp.2d 57, 63 (D.D.C. 2009) (quoting Bell Atlantic v. Twombly, 550 U.S. 544, 555 (2007)).*** Thus, the Federal Rules embody "notice pleading" and require only a concise statement of the claim, rather than evidentiary facts.

**37.** They (the defendants) had a responsibility and/or a duty to respond, rebut the affidavits,[u] and because each of their claims were contested, disputed, they were estopped from moving further with any debt collection proceedings, and have ignored procedure. We have the right to have an order enjoining the

defendants from proceeding any further with any debt collection and or foreclosure proceedings for their failure to follow the administrative procedures act.

**38.** The McDade Amendment, and the Supreme Court in Reynolds v. the United States, decided January 23, 2012 makes it clear that these administrative organizations must follow their administrative procedures and the administrative procedures act, and their failure to do so makes their actions nullities.

**39.** At present the following defendants without leave of the court, and or leave of the United States Department of Agriculture, Administrative Housing Department, Federal Housing Administration, under the Administrative National Housing Act of 1933, are in breach of contract and breach of fiduciary duty of care. "It is settled that the duties and powers of a trustee are defined by the terms of the trust agreement and are tempered only by the fiduciary obligation of loyalty to the beneficiaries."[g]

**40.** The relevant portion of the IRC addressing the definition of a REMIC is:

> The PSA is filed under oath with the Securities and Exchange Commission. The PSA also incorporates by reference a separate document called the Mortgage Loan Purchase Agreement ("MLPA"). These various documents, and hence the acquisition of the mortgage assets for the Trust, are governed under the law of the State pursuant to the relevant sections of the PSA states in part:
>
> (a) General rule. For purposes of this title, the terms 'real estate mortgage investment conduit' and 'REMIC' mean any entity—
> (1) to which an election to be treated as a REMIC applies for the taxable year and all prior taxable years,
> (2) all of the interests in which are regular interests or residual interests,
> (3) which has 1 (and only 1) class of residual interests (and all distributions, if any, with respect to such interests are pro rata),
> (4) as of the close of the 3rd month beginning after the startup day and at all times thereafter, substantially all of the assets of which consist of qualified mortgages and permitted investments.[h]

**41.** The borrowers are said to be "is a third-party investor of the pooling and servicing agreement created by the defendants trust, indeed without such pooling and servicing agreement the plaintiff and other mortgagors similarly situated would never be able to obtain financing"[f], each of the defendants have knowingly, intentionally, deliberately, and in an ongoing conspiracy conspired to violate the pooling and servicing agreements in order to enrich themselves, and to bring a benefit to agencies and/or organizations for the sake of monetary gain. Have acted outside the interests of the public, justice, due process, the great State of **New York**, the citizens of the state of **New York**, and/or in violation of the rules, laws, policies, ordinances, statutes that govern their activities within the state of **New York**, and the agreement entered into between their organizations and the plaintiff's.

**42.** The IRC also provides definitions of prohibited transactions and prohibited contributions which are relevant to this case as well. In the context of this case, the relevant statute is the definition of prohibited contributions which is as follows:

26 U.S.C. 860G(d)(1) states:

Except as provided in section 860G(d)(2), "if any amount is contributed to a REMIC after the startup day, there is hereby imposed a tax for the taxable year of the REMIC in which the contribution is received equal to 100 percent of the amount of such contribution."
26 U.S.C. 860G(d)(2) states:
(2) Exceptions. Paragraph (1) shall not apply to any contribution which is made in cash and is described in any of the following subparagraphs:
(A) Any contribution to facilitate a clean-up call (as defined in regulations) or a qualified liquidation.
(B) Any payment in the nature of a guarantee.
(C) Any contribution during the 3-month period beginning on the startup day.
(D) Any contribution to a qualified reserve fund by any holder of a residual interest in the REMIC.
(E) Any other contribution permitted in regulations.

**43.** The PSA addresses these sections of the IRC by obliging the parties to the Trust to avoid any action which might jeopardize the tax status of any REMIC and/or impose any tax upon the Trust for prohibited contributions or prohibited transactions. These PSA provisions are important to the court's analysis of the facts in this case because of the interplay between the **New York Trust Law**, the IRC's REMIC provisions, and the PSA's incorporation of the IRC REMIC provisions.

**44.** The Trust Instrument/PSA Sets Forth a Specific Time, Method and Manner of Funding The Trust The Trust seeking to foreclose on the Plaintiff has included in the terms of its Trust agreement (the PSA) a specific time, method and manner of funding the Trust with its assets. The most critical time is the Trust's closing date. According to the terms of the PSA, all of the assets of the Trust were to be transferred to the Trust on or before the closing date. This requirement is to ensure that the Trust will receive REMIC status and thus be exempt from federal income taxation. The PSA provides for a window of 90 days after the Trust closing date in which the Trust may complete any missing paperwork or finalize any documents necessary to complete the transfers of assets from the depositor to the Trust.

**THE TRUST AGREEMENT PROVIDES THE ONLY MANNER IN WHICH ASSETS MAY BE PROPERLY TRANSFERRED TO THE TRUST AND ANY ACT IN CONTRAVENTION OF THE TRUST AGREEMENT IS VOID**

**45.** Thus, for an asset to become an asset of the Trust it must have been transferred to the Trust within the time set forth in the PSA. The additional 90 days in the timeline requirement is incorporated from the REMIC provisions of the IRC to provide a "clean-up period" for a REMIC to complete the documents associated with the transfers of assets to a REMIC after the startup day (which is also the

Trust closing date). Therefore, according to the plain terms of the Trust agreement in this case, the closing date/startup date and the last day for transfer of assets into the Trust.

> Transfer of Assets to the Trust Pursuant to the Trust Instrument/PSA
> As a generic matter, there are several methods by which the underlying assets of the Trust, specifically the individual promissory notes, might be transferred or conveyed. A trust's ability to transact is restricted to the actions authorized by its trust documents. In this case, the Trust documents permit only one specific method of transfer to the Trust. That method is set forth in the PSA:

**46.** Pursuant to the Mortgage Loan Purchase Agreement, each Seller sold, transferred, assigned, set over and otherwise conveyed to the Depositor, without recourse, all the right, title and interest of such Seller in and to the assets sold by it in the Trust Fund…. In connection with such sale, the Depositor has delivered to, and deposited with, the Trustee or the Custodian, as its agent, the following documents or instruments with respect to each Mortgage Loan so assigned: (i) the original Mortgage Note, including any riders thereto, endorsed without recourse in blank or to the order of "-----, as Trustee for Certificate holders or in the case of a loan registered on the MERS system, in blank, and in each case showing an unbroken chain of endorsements from the original payee thereof to the Person endorsing it to the Trustee;

**47.** The analysis of this transfer language requires the court to consider each part. In the second paragraph of the language in the Trust Agreement, the first statement is one of transfer, stating "the Depositor has delivered to and deposited with the Trustee or the Custodian the following documents". The key document is the original mortgage note, which requires mandatory endorsements found in this language: "the original mortgage note…. endorsed without recourse" followed by at least two alternatives which are phrased in the either/or format. The first states "in blank or to the order of "------, as Trustee for Certificate holders of ----- LLC, Asset-Backed Certificates, Series ---." The second provides as the "or" proposition for transfer the following statement "in the case of a loan registered on the MERS system, in blank…" In each case, the affirmative language of the Trust agreement places a burden on the depositor to make a valid legal transfer in the terms required by the Trust instrument. The key language in the entire paragraph is the final statement trailing the "either/or" language which reads: "and in each case showing an unbroken chain of endorsements from the original payee thereof to the Person endorsing it to the Trustee".

**48.** Stacked upon the top of this requirement of an unbroken chain of endorsements is the requirement of certification of the final contents of the collateral file for the benefit of the Trust. This requirement is found as a part of the PSA. This Document states in part as follows:

> With respect to each Mortgage Loan, the Mortgage File shall include each of the following

items, which shall be available for inspection by the Purchaser or its designee, and which shall be delivered to the Purchaser or its designee pursuant to the terms of this Agreement.

(a) The original Mortgage Note, including any riders thereto, endorsed without recourse and showing to the extent available to the related Mortgage Loan Seller an unbroken chain of endorsements from the original payee thereof to the Person endorsing it to the Trustee; The foregoing requirement demonstrates clearly that while the parties to the securitization made provisions whereby promissory notes for this Trust might be delivered in blank to the Trustee, there were two requirements that were mandatory. First, all notes sold to the Trust were required to have an unbroken chain of endorsements from the original payee to the person endorsing it to the Trustee. This requirement stems from a particular business concern in securitization, namely to evidence that there was in fact a "true sale" of the securitized assets and that they are in no way still property of the originator, sponsor, or depositor, and thus not subject to the claims of creditors of the originator, sponsor, or depositor. A fact testified to by a securitization **expert**, Thomas J. Adams, who explained under oath and examination respecting a similar **Trust as follows**:

"So what then I guess with respect to notes is -- what's the purpose then of having a chain of endorsements, if what I'm concerned about is who currently owns it? My understanding is that it helps establish how you came to possess it. And why does that matter?

From an investor perspective in a mortgage backed securities governed by a pooling and servicing agreement, you want confidence that the collateral for the file is properly conveyed to it, that -- that the -- that they will have the right to establish their ownership as investors in that collateral.

Second, there was a requirement that ultimately, within **90** days of the Trust closing date, the actual promissory note must be endorsed over to the trustee for the specific trust to effectively transfer the asset into the trust and therefore make the **MARIO E. CASTRO** promissory note Trust property. This requirement finds support in logic and law and is, in fact, the ancient and settled law of **New York** on this issue.

**New York Law Governs the Mandatory Requirements to Effectively Transfer An Asset To A Trust**

It is not contested that securitization trusts, such as the defendant, are subject to the common law of **New York**. **New York** Trust Law is ancient and settled. There are a few principles of **New York** Trust Law that are particularly important to the analysis of whether any particular asset is an asset of a given trust. Under **New York** law, the analysis of whether an asset is trust property is determined under the law of gifts. [j]

**49.** In order to have a valid inter vivos gift, there must be a delivery of the gift (either by a physical delivery of the subject of the gift) or a constructive or symbolic delivery (such as by an instrument of gift) sufficient to divest the donor of dominion and control over the property and "what is sufficient to constitute delivery 'must be tailored to suit the circumstances of the case'".[k] The delivery rule requires that "'[the] delivery necessary to consummate a gift must be as perfect as the nature of the property and the circumstances and surroundings of the parties will reasonably permit.'" "Under **New York** law there are four essential elements of a valid trust of personal property: (1) A designated beneficiary; (2) a designated trustee, who must not be the beneficiary; (3) a fund or other property sufficiently designated

or identified to enable title thereto to pass to the trustee; and (4) the actual delivery of the fund or other property, or of a legal assignment thereof to the trustee, with the intention of passing legal title thereto to him as trustee." [m] There is no trust under the common law until there is a valid delivery of the asset in question to the Trust. [n]

**50.** If the trust fails to acquire the property, then there is no trust over that property which may be enforced. An attempt to convey to a trust will fail if there is no designated beneficiary in the conveyance. In the context of mortgage-backed securitization, it is clear that registration of the notes and mortgages in the name of the trustee for the trust is necessary for effective transfer to the trust. Within the Statutes of New York governing Trusts, Estates Powers and Trusts Law (EPTL) section 7-2.1(c) authorizes investment trusts to acquire real or personal property "in the name of the trust as such name is designated in the instrument creating said trust." Further, the actual contracts of the parties, which include the custodial agreements, the mortgage loan purchase agreements, and the trust instrument known as the "pooling and servicing agreement," prescribe a very specific method of transfer of the notes and mortgages to the Trust. Because the method of transfer is set forth in the Trust instrument, it is not subject to any variance or exception. [o]

**51.** The Trust documents require that the promissory notes and mortgages be transferred to the Trustee, which under New York trust law requires valid delivery. The question then arises — "What constitutes valid delivery to the Trustee?" When the requirements of transfer to the trustee are viewed in the context of the corporate or business trust indenture, more information about compliance with these requirements becomes apparent. One must first understand that "[t]he corporate trustee has very little in common with the ordinary trustee . . . . The trustee under a corporate indenture . . . has his [or her] rights and duties defined, not by the fiduciary relationship, but exclusively by the terms of the agreement. His [or her] status is more that of a stakeholder than one of a trustee." [o]

> Indeed, "[a]n indenture trustee is unlike the ordinary trustee. In contrast with the latter, some cases have confined the duties of the indenture trustee to those set forth in the indenture." The indenture trustee, it has been said, resembles a stakeholder whose obligations are defined by the terms of the indenture agreement. Moreover, "[i]t is settled that the duties and powers of a trustee are defined by the terms of the trust agreement and are tempered only by the fiduciary obligation of loyalty to the beneficiaries". The clear import of these cases and statutes is that the delivery of an asset to a trustee under the terms of a corporate indenture requires strict compliance with the mandatory transfer terms of the trust indenture. Thus the Trustee in this case can only take delivery in strict compliance with the terms of the PSA/Trust document. Further, given that New York Estates Powers and Trusts Law section 7-2.1(c) authorizes a trustee to acquire property "in the name of the trust as such name is designated in the without the consummated act of delivery. [p]

> "If the donor delivers the property to the third person simply for the purpose of his delivering it

to the donee as the agent of the donor, the gift is not complete until the property has actually been delivered to the donee. Such a delivery is not absolute, for the ordinary principle of agency applies, by which the donor can revoke the authority of the agent, and resume possession of the property, at any time before the authority is executed.""

**52.** How could one logically argue that delivering a promissory note endorsed in blank (making it bearer paper) into a trustee's vault is "delivery beyond the authority and control of the donor" when the vault is managed by the agent of the donor? If the donor were to claim that the promissory note, were its property, not the trustee's, there would be no evidentiary basis for the trustee to claim ownership. Accordingly, New York law expressly requires that for property to be validly delivered to a trust, the property must pass completely out of the control of the donor (and its agents): ¶ Another case addressing this issue holds that "In order that delivery to a third person shall be effective, he must be the agent of the donee. Delivery to an agent of the donor is ineffective, as the agency could be terminated before delivery to the intended donee." ¶

**53.** Trustees for securitizations often occupy many roles simultaneously and conflictingly both as document custodians and trustees for myriad thousands of securitizations as well as for various parties who are active in the securitization process including originators, servicers, sponsors and depositors. Accordingly, it is inconceivable that anything other than registration into "the name of the trust as such name is designated in the instrument creating said trust property."

**54.** This point was recently slammed home to the public consciousness in a watershed decision out of the State of Massachusetts. On January 7, 2011, the Supreme Judicial Court of Massachusetts—the highest court in that state—rendered a unanimous verdict in a case captioned U.S. Natl. Bank Assn., Trustee, v. Ibanez, For ABFC 2005-0PT 1 Trust, ABFC Asset Backed Certificates, Series 2005-0PT 1, No. SJC-10694, (Mass. Jan. 7, 2011). While that ruling is of course not binding upon this court, it is very much contrary to the mortgage securitization industry's position in cases involving the foreclosure of mortgage loans which have allegedly been securitized. The facts of the case in Massachusetts and the facts of this instant case are similar. Both the Massachusetts and the **MARIO E. CASTRO** cases concern an entity seeking to foreclose on the mortgagor when the foreclosing entities did not possess the underlying promissory note at the time of the foreclosure (or attempted foreclosure in the **MARIO E. CASTRO** situation). The case was a ruling on two consolidated cases – both cases were filed by banks (as trustees for which could ever qualify as delivery to any particular securitization trust). Absent such registration, there would be nothing that would indicate which of thousands of trusts in the care of a trustee a particular promissory note might belong to or if it were the personal property of the trustee itself. Absent such registration, a promissory note would simply be bearer paper, and thus the property of anyone who obtained possession of it. Further, if

anything less constituted delivery, why are our courts overwhelmed with robo-signed, robo-stamped mortgage assignments and notes as in this case and affidavits expressing legally-impossible transfers into the specific trusts long after the trusts have closed for funding? P In my case, the defendants have each confirmed that they are not and have not been in possession of my "original promissory note" bearing my wet ink signature by their silence and tacit acquiesce evidenced by their default **(See...Exhibits - A)** of my presentments as I demanded that they produce this note for my inspection and are continuing to damage me and my personal credit/credit worthiness by their continual default and are not entitle to any such payment as they are not holders in due course.

**55.** Both cases were filed by banks (as trustees for two separate trusts) to quiet title on properties they had foreclosed and purchased at the foreclosure sale to satisfy the mortgagor's debt. The Massachusetts Supreme Judicial **Court held that neither bank proved that its trust owned the mortgages when they foreclosed on the homes; therefore, neither had title to the foreclosed properties and that their foreclosures were void**. Effectively, this put the borrowers back into the place they were before the foreclosure. The Massachusetts Supreme Judicial Court did not tell the homeowners they are allowed to shirk their obligation to pay their mortgages, which are still outstanding, valid obligations. The Massachusetts Supreme Judicial **Court did, however, sharply instruct the banks that they must have the proper documentation which demonstrates a valid right to foreclose before a foreclosure can be carried out**. It is well worth noting the conclusion of the Massachusetts Ibanez opinion. The Massachusetts Supreme Judicial Court noted that "The legal principles and requirements we set forth are well established in our case law and our statutes. All that has changed is the [banks'] apparent failure to abide by those principles and requirements in the rush to sell Mortgage-backed securities." Just as the principles and requirements of Massachusetts law are well-founded, so too are those of New York law, and they should be upheld even if adherence to the law is inconvenient for banks rushing to sell mortgage-backed securities.

**56.** THE INTENT TO TRANSFER AN ASSET TO THE TRUST IS NOT A TRANSFER TO THE TRUST

The contents of these statutes, cases and contracts lead to one inescapable conclusion: the intent of the parties and the requirements of the contracts were that the assets be conveyed to the Trusts by the Trust closing dates. For a transfer to any particular trust to be effective, there should have been a registration of the assets into "the name of the trust as such name is designated in the instrument creating said trust property"—this is the only method by which these assets could have been "divested from the possession and title" of the donors.

**57.** In response to the lucidity of the controlling law on this issue, the mortgage foreclosure industry has chosen to argue that it is clear that it was the parties', "intent" to transfer these assets and therefore "no court" would ever declare that these assets were not transferred to these trusts. The controlling law is overwhelmingly against the industry in this position. The failure to deliver the notes and mortgages to these trusts as required by the trust instruments is a default under the terms of every agreement that these parties executed, including their agreements for payment guarantees with the monoline bond insurers. The securitization industry chose to create its securitization trusts under New York law precisely because the law was ancient and settled. Now that the actions of the foreclosure industry contradicts that law, parties such as the defendant trust are left to argue hope against precedent. The well-settled New York trust law provides that "A mere intention to make a gift which has not been carried into effect, confers no right upon the intended beneficiary. There must be also delivery beyond the power of further control and dominion." (Vincent v. Rix, 248 N.Y. 76, 85 v. Rix, 248 N.Y. 76, 85; Matter of Green, 247 App. Div. 540; McCarthy v. Pieret, 281 N.Y. 407, 409.) as cited by In re FIRST TRUST & DEPOSIT CO., 264 A.D. 940, 941 (N.Y. App. Div. 4th Dep't 1942).[r]

**58.** Equity will not help out an incomplete delivery. If the agent of the donor has failed to make the delivery expected equity will not declare him a trustee for the donee.

> **"In determining whether there has been a valid delivery, the situation of the subject of the gift must be considered. Thus if it is actually present, and capable of delivery without serious effort, it is not too much to say that there must be an actual delivery, although the donor need not in person or by agent hand the article to the donee, if the latter assumes the possession."**

"Thus, Thornton on Gifts and Advancements

(§140) notes:

There was absolutely nothing in the physical nature of the papers to be delivered in this case, or in the physical condition or the surroundings of the donor, that made a symbolical delivery necessary." It is true that the old rule requiring an actual delivery of the thing given has been very largely relaxed, but a symbolical delivery is sufficient only when the conditions are so adverse to actual delivery as to make a symbolical delivery as nearly perfect and complete as the circumstances will allow. Further, the failure to convey to a trust per the controlling trust document is not a matter that may be cured by the breaching party. New York law is unflinchingly clear that a trustee has only the authority granted by the instrument under which he holds, either deed or will. This fundamental rule has existed from the beginning and is still law. An indenture trustee is unlike the ordinary trustee. In contrast with the latter, some cases have confined the duties of the indenture trustee to those set forth in the indenture.

**59.** From this context springs the seminal rule of law that effectively causes the parties to the Trust agreement and the Trust to be "gored by their own bull". New York's law is so well-settled regarding the limitations of a trustee's power to act that New York's Estates Powers and Trust Law Section 7-2.4 states:

§ 7-2.4 Act of trustee in contravention of trust-

If the trust is expressed in the instrument creating the estate of the trustee, every sale, **conveyance or other act of the trustee in contravention of the trust, except as authorized by this article and by any other provision of law, is void**.

**60.** Therefore, the trustees for these trusts may only acquire assets in the manner set forth in the trust instrument and may not acquire assets in violation of the trust instrument. To the extent that any assets were not conveyed to these trusts as required and when required by the trust instrument, they are not assets of the trusts and the trustee cannot correct this deficiency now since the funding period provided in the Trust instruments passed many years ago. The attempt to acquire assets by these trusts which violate the terms of the Trust instrument are void. Therefore, late assignments, improper chains of title, late endorsements, improper chains of title in the endorsements and the attempt to transfer to the trusts by foreclosure deed are just a number of the many examples of actions which are void if taken by a party to the indenture who is attempting to transfer property to the Trustee for the Trust in violation of the trust instrument.

**61. THE TRUST NEVER PROPERLY ACQUIRED THE MORTGAGE NOTE AND THE TRUST CANNOT CURE ITS FATAL STANDING DEFECT**

Under New York law there is no trust over property that has not been properly transferred to a trust. The Defendant Trust stated to the U.S. Securities and Exchange Commission in filings under oath that it has assets in excess of $400 million, to acquire assets, the Trust must be funded in accordance with the requirements of the PSA/Trust documents. The pertinent terms of the agreement details how the mortgage notes was required to be delivered. The original mortgage note required a showing of an unbroken chain of endorsements from the original payee to the person endorsing it to the Trustee. The Plaintiff believes there is evidence of robo-stamping and robo-signing in regards to alleged assignments of his mortgage and/or mortgage note, another well-known fraudulent act/scheme utilized by these banks, services, alleged lenders, partners and their subsidiaries to deceive the Plaintiff and others similarly situated into believing interest was transferred over to them legally and lawfully by an authorized person to trick them to signing modifications and re-instatement agreements brought back to the people's attention in **January 2018** with another **whistle blower** under the false claims act in the case of **"United State of America, ex rel., Bruce Jacobs v. Bank of America Corporation, et al.**

**case # 1:15- cv-24585-UU,"** since the consent order by the **Atty. Gen.'s** for the several different states from **2012 to 2016** and Plaintiff hereby incorporates by reference any and all claims, arguments, relevant evidence utilized and brought forth in the referenced **Whistle Blower** regarding the issues of robo-stamping and robo-signing and hereby exercises his due process reserved and retained natural rights to discovery and or subpoena the same information and documentation referenced in this case to bring forth prima facie evidence in this current matter as the names referenced in this case in regards to robo-stamping/robo-signing are the same names provided to Plaintiff back in 2014 by Bank of America.

**62.** Based on the documented defendants defaults **(see…exhibits - A)** on record in this case, the defendants does not have the authority to foreclose and/or harass the Plaintiff in regards to commencing a foreclosure action based off an alleged default. And yet, there is no "showing" of an unbroken chain of endorsements as there were no documents provided to the Plaintiff.

"According to the requirements set forth in the Trust Agreement I would expect to see a series of endorsements of the promissory note reflective of each party who had an interest in the promissory note reflective of each party who had an ownership interest in the promissory note culminating with a blank endorsement from the depositor at the very minimum."

**63.** The Trust never possessed the mortgage note per the terms of the PSA (Pooling and Service Agreement). Further, in the PSA's exhibits, Exhibit One sets forth the contents of the collateral file for each mortgage loan that is trust property and further includes a final specific endorsement to the Trustee for the specific trust in this case to effect a final transfer to the Trust and to make the **MARIO E. CASTRO** promissory note trust property.

**64.** Any attempt to transfer the promissory note to the Trust at this late date would fail for numerous reasons, not the least of which is that the closing date Statute of Limitations passed more than a 1 year ago. By the terms of the Trust and the applicable provision of the Internal Revenue Code incorporated into and a part of the Trust agreement, the promissory note cannot be transferred to the Trust. ¶

**65. THE TRUST IS NOT ENTITLED TO THE MONEY SECURED BY THE MARIO E. CASTRO MORTGAGE AND CANNOT FORECLOSE**

Because the un-contradicted evidence in the case is that the **MARIO E. CASTRO** loan has never been conveyed to the Trust and a conveyance to the Trust at this time would be void as violating the terms of the PSA the Court is left with one clear and inescapable proposition: The Trust has never owned the **MARIO E. CASTRO** promissory note and the Trust can never own the **MARIO E. CASTRO** promissory note.

66. Per the **NEW YORK** Statutes, the power to sell lands is held by the person who " . . . by assignment or otherwise, becomes entitled to the money thus secured." As outlined above, the Trust has not provided documentation to show that it was or is entitled to the money secured by the mortgage of **MARIO E. CASTRO**'s property. "The defendant Trust [LaSalle] has offered no proof of ownership and the collateral file offered by the defendant Trust clearly demonstrates that this loan was not securitized nor was it transferred to this Trust." [q]

## VI. Common-Law Trial by Jury Demand

67. It is common knowledge, fact, and conclusion of law that the State of **NEW YORK** Is a Common-Law State governed by the rules of Common-Law [r], and this Court is authorized by the very same Constitution for the great State of **New York** established under the rules of Common- Law, the Northwest Ordinance, and the Declaration of Independence each recognize "Original Jurisdiction", i.e. Common-Law.

68. A ""**Trial by Jury**"", is a Constitutional Guarantee one whereby the plaintiffs elect to exercise this right of entitlement, however, the Constitutional Guarantee to a ""**Trial by Jury**"", is predicated upon the Original Jurisdiction, i.e. at Common-Law.

69. We elect to have a jury who will listen to the facts and make a determination based upon the evidence presented, who shall be duly informed, duly impaneled, and completely capable of rendering a judgment at common-law.

## VII. Brief history:

70. The defendants **THE BANK OF NEW YORK MELLON, as Trustee for the Certificate Holders of CWALT Inc., Alternative Loan Trust 2006-0A11 mortgage pass-through certificates 2006-0A11, f/k/a THE BANK OF NEW YORK MELLON, ALTERNATIVE LOAN TRUST 2006-0A11, Loan(s) # 0578156729, 221987645123; SHELLPOINT MORTGAGE SERVICING (alleged servicer); Loan(s) # 0578156729, 221987645123;** and the other aforementioned lenders each receive the challenge to their claim– each receive a notice to cease and desist until they could provide validation/verification, a comprehensive and complete set of financing documenting every single transaction with the account as prescribed by RESPA (only Shellpoint violated), THE FAIR DEBT COLLECTIONS PRACTICES ACT, THE FAIR CREDIT REPORTING ACT(only Shellpoint violated), THE ADMINISTRATIVE PROCEDURES ACT, SIMPLE CONTRACT clause, Due Process and Equal Protection of Law, and the rules of **Common-**

**Law**. Not a single one of the defendants have complied with the law, have a valid claim, have carried out their fiduciary duties as prescribed by the contract/trust, are in breach of the agreement, and for their failures are indebted to the plaintiff's **(the consumer)** for greater than **$2 million USD**.

**71.** Each of the aforementioned defendants have participated in one fashion, form or another in causing damage, injury to the plaintiff's and have violated public policy respecting demanding payment for debts. All of the claims are proved by the accounting records comprehensive in nature and internal policies and forms maintained by the custodian of records for each of the aforementioned defendants.

'the (the defendants, collectively and severally) created the money and credit upon its own books by bookkeeping entry as the consideration for the Note and Mortgage', this is a culture in the United States amongst organizations, corporations and or agencies, with little or no concern for the impact that it has on the People. Note what the United States of America Congress in general assembly have to say on this matter:

**"Since March 9, 1933, the United States has been in a state of declared national emergency." "These proclamations give force to 470 provisions of federal law.** These hundreds of statutes delegate to the President extraordinary powers exercised by Congress, which affect the lives of American citizens in a host of all-encompassing manners. This vast range of powers taken together, confer enough authority to rule this country without reference to normal constitutional process." **Senate Report 93-549, July 24, 1973;**
[Pursuant to S. Res. 9, 93d Cong.]

## INTRODUCTION

### A — A Brief Historical Sketch of the Origins of Emergency Powers Now in Force

_ A majority of **the People** of the United States have lived all of their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency.

The act of March 9, 1933 otherwise known as the emergency economic banking relief act (verified by Congress in 1933 as a declaration of bankruptcy, "we are here now in chapter 11. Members of Congress are official trustees presiding over the greatest reorganization of any

bankrupt entity in world history, the U.S. government." Congressional Record March 17, 1993. P.H1303) Bankruptcy- The state or condition of one who is a bankrupt; amenability to the bankrupt laws; the condition of one who has committed an act of bankruptcy, and is liable to be proceeded against by his creditors therefor, or of one whose circumstances are such that he is entitled, on his voluntary application, to take the benefit of the bankrupt laws. The term is used in a looser sense as synonymous with "insolvency."

Since that period **'The Nation Has Been in a State of National Emergency"** (see also **THE FEDERAL ECONOMIC EMERGENCY RELIEF ACT of May 12, 1933**). This ongoing emergency is a continuation of the banking holiday. The actual intentions of Congress confirmed that we are in the midst of a **CONTINUING NATIONAL EMERGENCY BANKING HOLIDAY,** the government was due to provide consideration, what was the consideration provided by governmental entities?

Franklin D. Roosevelt

8 - Proclamation 2039—**Declaring Bank Holiday March 9, 1933**; Public Papers and Addresses of Franklin D. Roosevelt

By the President of the United States of America

A Proclamation

Whereas there have been heavy and unwarranted withdrawals of ... currency from our banking institutions ... and ...

*Whereas those conditions have created a national emergency*; and

Whereas it is **in the best interests of all bank depositors that a period of respite be provided** ...; and

Whereas it is provided in Section 5 (b) of the Act of October 6, 1917 (40 Stat. L. 411), as amended, **"That the President may ... regulate** ... under such rules and regulations as he may prescribe, by means of licenses or otherwise, any transactions ... or **currency** . . ." and (**the largest issue here is that the act of October 6, 1917 as amended by the act of March 9, 1933 conferred authority and/or delegated authority to the president of the United States to regulate currency, the act by its very own admission violated the separation of powers clause, and that it purported to delegate to the president extraordinary powers normally exercised by Congress; conferring authority on the president to rule this country without normal constitutional process, i.e. unconstitutional**).

Whereas it is provided in Section 16 of the said Act "That whoever shall willfully **violate any**

**of the provisions of this Act** or ... rule, or regulation ... and whoever shall willfully violate, neglect, or refuse to comply with any order of the President issued in compliance with the provisions of this Act, shall, upon conviction. . .";

Now, **Therefore I, Franklin D. Roosevelt, President of the United States of America,** in view of such national emergency and by virtue of the authority vested in me by said Act... do hereby proclaim, order, direct and declare that ... there shall be maintained and observed by all banking institutions and **all branches thereof located in the United States of America,** including the territories and insular possessions, **a bank holiday**, and **that during said period all banking transactions shall be suspended.** During such holiday ... no such banking institution or branch shall ... permit the withdrawal or transfer in any manner or by any device whatsoever, of any ... currency ... nor shall any such banking institution or branch pay out deposits, make loans or discounts ... transfer credits ... or transact any other banking business whatsoever.

During such holiday, the Secretary of the Treasury, with the approval of the President and under such regulations as he may prescribe, is authorized and **empowered** (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or **invested in obligations of the United States.**

As used in this order the term "banking institutions" shall include all Federal Reserve Banks, national banking associations, banks, trust companies, savings banks, building and loan associations, credit unions, or other corporations, partnerships, associations or **persons, engaged in the business of receiving deposits, making loans, discounting business paper, or transacting any other form of banking business.**

## VIII. FRANKLIN D. ROOSEVELT Unconstitutional Act[s]

72. This legendary **"BANKING HOLIDAY",** is still ongoing **as a matter of fact** Congress decided in 1976 with the passage of the national emergency act to not include the "**EMERGENCY ECONOMIC RELIEF ACT of March 9, 1933"** nor have the **proclamation's 2038, 2039 and 2040** been rescinded and or declared void by the president.

73. Yet in this national emergency which has been deemed by Congress to be still "**EXTANT**" and this

despite the fact that they said that their acts were unconstitutional in the first instance. Which makes the 470 provisions of so-called federal laws to be unconstitutional as they all stem from or have as their foundation and act that Congress itself says they did bring into force "These hundreds of statutes [that] delegate to the President extraordinary powers exercised by Congress, which affect the lives of American [private free born] citizens in a host of all-encompassing manners. This vast range of powers taken together, confer enough authority to rule this country without reference to normal constitutional process." Senate Report 93-549, July 24, 1973 or when they made the following claim "[Pursuant to S. Res. 9, 93d Cong.]

## INTRODUCTION

### A — A Brief Historical Sketch of the Origins of Emergency Powers Now in Force

_ **A majority of the People of the United States have lived all of their lives under emergency rule. For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency**. "Senate Report 93-549: Emergency Powers Statutes: Provisions of Federal Law Now in Effect Delegating to the Executive Extraordinary Authority in Time of National Emergency; Report of the Special Committee on the Termination of the National Emergency"

**74.** We must assume and presume that Congress was within the scope of its constitutional delegated power when they made the following observation of their own actions "**For 40 years, freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws brought into force by states of national emergency.**"

**75.** There has never been and or within the Constitution been delegated any authority to any branch of government to abridge the rights of any American citizen or person within the confines and borders of the United States of America.

> 'Delegate to the President extraordinary powers exercised by Congress, which affect the lives of American citizens in a host of all-encompassing manners. This vast range of powers taken together, confer enough authority to rule this country without reference to normal constitutional process

**76.** Impossible! However, there is on the public record, published in of the registry and despite this 'CONCLUSIONARY FACT', it has been said that the Constitution and the rights secured thereby have been suspended.

**77.** Everyone has forgotten the principle that the Constitution did not confer a single right on a single individual, person, people, men, woman, child, animal, the Constitution only secured rights. Unalienable and unalienable, inalienable and alienable, rights cannot thereby be affected because there is no delegation of authority to suspend natural rights, Congress never has been delegated nor has the executive branch been delegated the authority to do so.

**78.** It has been said that because the president and congress got together and conferred on this matter that they created a two thirds majority within the so-called branches of government, however for that to be the case then Congress would indeed have to be representing the interests of **the People**, and in so representing, "Them, '**the People**', those who are members of the national community interests, **the People** would have a voice.

**79.** How can **the People** have a place when Congress has admitted to decapitating them, dismembering them, ripping out their tongue? "freedoms and governmental procedures guaranteed by the Constitution have, in varying degrees, been abridged by laws**"**, once again no delegation of authority to do so, to act in such a capacity, and we object and we challenge these actions of the Congress which is led to the current state of affairs.

**80.** By such acts Congress could not arbitrarily abridge the common-law, there is no provision of law which would permit Congress to suspend, eradicate, trample on that which the Constitution was based, and their delegation of authority is derived. The Constitution is a **Common-Law** instrument which is why the rights to a **Common-Law** process, procedure, rule his absolute.

**81.** Congress has made the claim that they have the authority to leverage **the People** of the country and all of their property as collateral as mortgaged- "The ownership of all property is in the state; individual so-called 'ownership' is only by virtue of the government..." Senate Document No. 43, 73rd Congress, 1st Session.

**82.** These acts perpetrated by these conspirators were in and of themselves not unconstitutional until they were made applicable to **the People**, the national community, the public, for by doing so they failed to follow procedure, in this case the proper constitutional procedure making their acts and the actions associated thereto invalid, nullity's, unconstitutional!

**83.** This is a violation of The Right to Property Clause, and a violation of the third article of the Constitution, the fourth article of the Constitution the fifth article of the Constitution which secures to everyone the right to property and to not be subjected to the loss of that property without due process of law. Congress has admitted that they did not follow the law which means that they have done so without

providing **the People** due process, and we challenge their actions as unconstitutional throughout.

> "Under the new law the money is issued to the banks in return for government obligations ... The money will be worth 100 cents on the dollar, because it is backed by the credit of the nation. It will represent a mortgage on all the homes, and … of all **the People** of the nation." Congressional Record, March 9, 1933 on HR 1491 p. 83.

**84.** The defendants who carry the title and/or capacity of financial institutions have participated in the violation of individual rights as well as the increase on the public debt, by actions which purport to be lawful when in fact are based on unlawful consideration.

**85.** As noted in the preceding case at **Common-Law** (if the right to proceed at **Common-Law** was recognized in 1966 it must still be recognized at the present day), the bank admitted that the monies they lend are not lawful currency under **the coinage act, the legal tender act**, that they have no value.

**86.** The United States government has taken the official position that even be legal tender known as Federal Reserve notes have no value, receive no backing from anyone or anything-

> "Federal Reserve notes are not redeemable, and receive no backing by anything. This has been the case since 1933. The notes have no value for themselves," this is taken from the official website of the United States financial expert, the United States Department of the Treasury whose job it is to print the money to be utilized by the public, and note how they say that since the government declared bankruptcy in 1933 their notes have had no value.

An official website of the United States Government

***An official website of the United States Government***

U.S. DEPARTMENT OF THE TREASURY

**https://www.treasury.gov/resource-center/faqs/Currency/Pages/legal-tender.aspx**

**87.** As was mentioned there has been no remedy provided to us, **The People**, those who are part of the national community as was required by the delegation of authority through the representative government.

**88.** The United States treasury through the Bureau of printing and engraving issues legal tender in the form of Federal Reserve notes, which per their own regulation and statute or only to be utilized by the

Federal Reserve board and the member banks of the Federal Reserve- GOLD RESERVE ACT 48 Stat. 337 (1934), 12 USC 411.

**89.** GOLD RESERVE ACT 48 Stat. 337 (1934) was designed to do the following:

Following the Gold Content Rider of mid-1933, the government sought to stabilize the gold value of the dollar in an effort to raise prices. Congress, fulfilling a request from President FRANKLIN D. ROOSEVELT, passed the Gold Reserve Act on January 30, 1934, under its monetary power and extended broad authority to establish a sound currency system. The act called in all gold and gold certificates in circulation, with specified exceptions, and granted the Treasury title to all monetary gold. The act also established an Exchange Stabilization Fund with which the secretary of the treasury was empowered to deal in gold in international markets to preserve a favorable balance of exchange and support the dollar. Congress also granted the President authority to regulate the gold content of the dollar. Further sections dealt with silver coinage and retroactively approved actions taken under authority of The Emergency Bank Act.

**90.** On January 31, Roosevelt reduced the gold content of the dollar to just under sixty percent of its former value. By mid-year the absence of circulating gold necessitated a congressional Law the Act of June 5th, 1933 abrogating clauses in private contracts and government bonds that called for payment in gold; the Supreme Court sustained this action in the gold clause cases (1935).

**91.** Yet the Supreme Court decisions never dealt with the issue of the March 9, 1933 act and its constitutionality, we hereby bring forth this matter in the interest of justice, in the interest of the public, in the interest of the rights retained and reserved by **the People**, in the interest of consideration and value i.e. simple contract.

**92.** **The People** have a right to engage in commerce this is solidified by the fact that Congress may regulate commerce but it cannot interfere with the right to engage in commerce. The United States of America Congress has taken away the right of **the People** to engage in commerce by enacting the emergency bankruptcy relief act of 1933, and doing so without the delegation of authority deemed necessary by the will of **the People**, for whom they are said to represent violated the Law.

**93.** The defendants having knowledge of these financing and financial facts have perpetrated this constructive fraud against **the People** of the United States of America which includes the plaintiffs who are part of the national community. Aside from the fact that the defendants may not under law create currency and or lend their own credit, as Congress has deemed that it interferes with the congresses right to regulate the currency of the United States-see the act of June 5, 1933; they do so despite the prohibitions, which automatically voids any claim of value for the credit being lent.

94. With respects to the attached mortgages/notes the aforementioned lenders and their servicers and/or their trustees and/or their securitization agents have acted together in conspiracy to deprive the plaintiffs of the value of their investment.

## IX. What actually occurred as opposed to what is believed to have occurred-

95. A party goes to a financing institution to apply for a loan, the financing institution or the lender tells the party, we'll refer to the party as Mr. Naïve, that in order to qualify for a loan they will need to run his consumer credit. Upon doing a verification of the consumer credit, Mr. Naïve is told that he qualifies for a loan of such and such amount, and that he may go and look for a property that has a market value for the amount of the loan to which he has been qualified.

99. Mr. Naïve finds a home in the amount of such and such, he then notifies the bank that he's located a home, the bank then issues the loan to Mr. Naïve, who then pays the previous owner the value, however, as we learned before there is no actual value, what is being lent is hypothecated value. And in the closing table the financial institution makes it mandatory that Mr. Naïve waived his rights or he will not be able to finalize the deal. However, *because this is a national emergency and the financial institutions are operating based on the laws created as a result of the national emergency, and those laws must aid and assist the People during this national emergency, it becomes a violation of law to make it mandatory that a party waived a right in order to receive a right.*

100. By law the financial institutions and now we are referring to the defendants who operate as financial institutions, cannot make it mandatory that a party waived any right in order to receive what is theirs by right i.e. access to a federal sponsored and backed loan. It is a violation of the right to contract, the principles of a simple contract to force a person to give up something of value without giving consideration for that value that is seized in violation of law.

101. Demanding that a party waived their right in this case especially in a non-**Judicial** foreclosure state, to seek **Judicial** review, without receiving something of value in return, and making such a waiver is mandatory is a violation of due process as expressed in the fifth article of the Constitution for the United States of America, i.e. is unconstitutional.

102. Yet that is exactly what the defendants did with respects to each of the attached mortgage/notes respecting this matter. However, they went even a step further, they had the borrower pledge a property for which they had no ownership of at the time of the pledge. In fact, at the closing table the borrower had not yet taken possession of the property, there have been no power of attorney granting any other

party to take possession of the property on behalf of the borrower. In fact, the borrower is told that they cannot take possession of the property until after they, the borrower has waived their rights.

**103.** The question is, how can the borrower surrender their right to a property listed as being collateral for a loan, when the loan is not a result of the acquisition of the property but vice versa, the property is as a result of the acquisition of the loan?

**104.** Principles of law say that the above is impossible- nemo dat rule noun. a legal rule that without the authority of the true owner, a person who does not own property, especially a thief, cannot give good title to that property to another. He cited the nemo dat rule in his brief to the court.

**105.** First the borrower could not pledge the property prior to obtaining the loan and taking possession of the property, it's a factual and contractual impossibility. Second, the financial institutions demand that an individual surrender their rights in order to obtain the loan is a violation of federal law. For remember each of these loans come with a federal guarantee something that was requested by the banks when we did the banking reform acts, the bank said they wanted a federal guarantee. So if there is a federal guarantee on each of these loans that equates to a due process of law guarantee attached to the full faith and credit of the government authorizing the guarantee.

**106.** It was the same situation when the government decided to create affirmative action, later certain group said that the affirmative action was a violation of the equal protection of law clause and thus affirmative action was deemed unconstitutional. On the fundamental principle that a right cannot be converted into a privilege, it is a violation of secured rights to demand that an individual waived their right in order to receive what theirs as a right. The banking holiday and the subsequent acts that came about as a result of that economic emergency relief, came with the guarantee of due process. In order for the banks to operate under the federal housing act, they must provide due process, and equal protection is what is to be expected under the law of expectancy.

**107.** Again we say that to demand that a person and/or a party surrender a secured right such as the right to property, and the right to a home, in order to secure a loan that has with it no consideration and essentially no value is unconstitutional and a violation of law. In another strange turn of events the defendants take the newly signed mortgage note and trade it on the market after having the borrower waived their rights. The waiver of rights come with no consideration, the only value being that of obtaining something from the borrower by force, coercion, threats of not being able to acquire that to which they have a right, to a federally backed and secured loan and by connection, a home.

**108.** You see the borrower has a right to a Federally Backed and secured Loan in order to obtain a Home, because if the intentions and acts of congress are to be relied upon, note the following intended FACT!!!"

> The Federal Emergency Relief Act of 1933 Approved, May 12, 1933
>
> AN ACT
>
> To provide for cooperation by the Federal Government with the several States and Territories and the District of Columbia in relieving the hardship and suffering caused by unemployment, and for other purposes.
> Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the Congress hereby declares that the present economic depression has created a serious emergency, due to widespread unemployment and increasing inadequacy of State and local relief funds, resulting in the existing or threatened deprivation of a considerable number of families and individuals of the necessities of life, and making it imperative that the Federal Government cooperate more effectively with the several States and Territories and the District of Columbia in furnishing relief to their needy and distressed people.
>
> ......
>
> Sec. 4. (a) Out of the funds of the Reconstruction Finance Corporation made available by this Act, the Administrator is authorized to make grants to the several States to aid in <u>meeting the costs of furnishing relief and work</u> <u>relief and in relieving the hardship and suffering caused by unemployment</u> <u>in the form of money, service, materials, and/or commodities to provide the</u> <u>necessities of life to persons in need as a result of the present emergency</u>, and/or to their dependents, whether resident, transient, or homeless.

**109.** The Reconstruction Finance Corporation, is now part of FEMA yet the government through the Banks/Financial Institution's had promised during this emergency to provide homes for the homeless, the necessities of life, money, services, materials. This was never supposed to be welfare, and a home is not that which is owned by another this was the so-called American dream act, and the monies provided were supposed to be lawful money not *valueless* Federal Reserve notes. They have failed in their duty of care and near governmental obligations.

**110.** The *necessities of life* are to be taken care of as a result of their being minors but once they have attained the age of majority, they were supposed to have received full access to their accounts so as to manage their own affairs, and the government has been preventing access to this without justification, without law, without delegation of authority.

**111.** In attaining the age of majority, we have disaffirmed any and all rights associated with minor- hood and we have disaffirmed any and all contracts associated with minor-hood, only to be denied access to the funds held in our minor accounts, we demand a declaratory Judgment as to our having memorialized

and attaining the age of MAJORITY.

**112.** Then after the fact, the borrowers told by the lenders that there is a balance due, that there is still a debt owed, when the debt that is alleged to be owed is a "government obligations", and obligation whereby the government credits the account of the lender; who by obligation is required to notify the borrower of such credits, and surrender the original deed along with the original note to the property to the borrower- see the federal housing act of 1934.

**113.** The lender does not and did not disclose this information to the borrower, however, because the federal government requires all corporations to file COMPREHENSIVE ANNUAL FINANCIAL REPORTS, i.e. tax records, this information is documented within those reports coupled with the references, notes, ledgers and term definitions, providing proof that these particular investments by the bank have been reimbursed to the bank by way of treasury securities and/or credits.

**114.** Then there's the issue of the tax write off that these financial institutions receive when they charge off an account, the defendants separately and collectively receive charge-offs on the accounts that they maintain on their records. The accounts for which they receive these charge-offs which amount to a value are not credited to the account of the alleged debtor in violation of the rights of the debtor, and contract law. We do hereby demand access to that information from the aforementioned defendants as a matter of right to compulsory examination of such witnesses/evidence/records.

**115.** The Supreme Court of the United States of America has documented that at the very minimum due process requires that a party be notified, accompanying this presentment is proof that the defendants were notified on several occasions as to the conflict, the dispute, the controversy regarding this matter and the associated issues. We notified the defendants (separately, collectively and severally all-inclusive) of their having no claim against the associated notes which are a matter of the record of this matter, and the defendants have each of them defaulted, failed to respond, violating their own procedures, their own policies, and the law.

**116.** For instance, as noted above the United States is saying that 'they (the government through the state) owns all property, any individual so-called ownership was only by virtue of government, we challenge and rebut such a presumption, for if the United States truly did own all property in the United States, this would make the claims by the Banks/Financing institutions invalid. That means that each one of the claims is being brought against the wrong party, when the United States in this instance would be the real party of interest; which is a violation of the 11th article of the Constitution respecting immunity of sovereign entities!

**117.** When the defendants elected to trade these notes on the open market and receive benefit, compensation, and/or value, they were required by the law of simple contract to return value and/or consideration for that which they received.

**118.** At law the borrower is The Trust Interest Holder (TIH), in conjunction with any other parties who may benefit from the trading of these properties on the financial markets. The borrower is owed interest that has accumulated as a result of this trade as per the securities act of 1934, the TRUST INDENTURE ACT, the SERVICING AND POOLING AGREEMENT, and the FEDERAL HOUSING ACT.

**119.** The actions of the defendants are that of a practice, this practice equates to unjust enrichment, and for failure to give consideration invalidating any claims that they may or may not have in the first instance.

**120.** Mr. Morgan admitted that all of the money or credit which was used as a consideration was created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank of Minneapolis, another private Bank, further that he knew of no United States Statute or Law that gave the Plaintiff the authority to do this. Plaintiff further claimed that Defendant by using the ledger book created credit and by paying on the Note and Mortgage waived any right to complain about the Consideration and that the Defendant was estopped from doing so. - At 12:15 on December 7, 1968 the **Jury** returned a unanimous verdict at **Common- Law**, for the Defendant.

**121.** Now therefore, by virtue of the authority vested in pursuant to the Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of United States and the Constitution and the laws of the State of Minnesota not inconsistent therewith; - the credit River Decision in the Case of First National Bank of Montgomery Vs. ***Daly***.

**122.** As was mentioned this matter was had at **Common-Law**, pursuant to the **Declaration of Independence, the Northwest Ordinance of 1787, the Constitution of the United States and the Constitution and the laws of the state not inconsistent therewith**, and it is under equal protection of law that we present this our **Common-Law** complaint with our **Common-Law** claims, under **Common-Law** rules.

**123.** The nominee, the middleman, and the securitization trustee are responsible for distributing and dispersing the funds associated with the interest to all of the trust interest holders (TIH's), who at times ambiguously distribute information pertaining to this within the body of several nonrelated documents, mailings, advertisements, and other distracting materials, a violation of the Truth In Lending Act. This is

an intentional practice, yet once the borrower demands access to what is held in trust i.e. their funds, their interest they receive no proper response. This is a breach of duty of care on the part of the "Nominee", the Middleman", or the "Securitization Trustee", a violation of **Common- Law** principles and the rules of **Common-Law**.

**124.** As mentioned each of the aforementioned mortgages/notes in law fall under RESPA (only Shellpoint violated), THE FAIR DEBT COLLECTIONS PRACTICES ACT, THE FAIR CREDIT REPORTING ACT(only Shellpoint violated), THE ADMINISTRATIVE PROCEDURES ACT, SIMPLE CONTRACT clause, Due Process and Equal Protection of Law, and the rules of Common-Law. Once a party responds to the claim of notice of default by general principle they are allowed to challenge such default.

**125.** If a notice of default involves a failure of a party to pay an amount that is claimed payable and due, the party making the claim that an amount is payable and due is as a custodian of record required to produce the record validating or documenting such a claim.

**126.** This would include a full and complete accounting of such documentation, yet when asked of the defendants to provide such proof in comprehensive format of each and every transaction, that they are required to document, record, and maintain the records for they refuse, failed to provide i.e. invalidating their claim.

**127.** Any claim of default for failure to pay an amount that is due, requires that the party making the claim has the burden of proving that the amount of the claim alleged payable and due.

**128.** Just producing the contract (a copy of the contract is not a contract, a contract must be in its original form in order for it to be valid containing an original signature under the **Common-Law** practice of a simple contract), does not suffice as a proof of claim, only prima facie the evidence. Once demand is made for the production of the original document to validate the claim, the principles of due process and equal protection of law dictate that such proof of claim must be made to appear, we continue to make such a claim in this instance.

**129.** If a party responds to the claim of default by the party who claims that they have been damaged and/or injured by said default, the burden of proof shifts to them to prove their claim i.e. to prove that the default is valid.

**130.** However, we must remember *that all property in the United States is owned by the government through the state, and that this property that is said to be owned by the government is "Government Obligations,*

*As Defined in the Act of Congress Documenting Such Ownership.* Which Means According to the Statute That As Long As the True Owner of the Property Is the United States, and the Fact That the United States Has the Agreement with the Financial Institutions, It Is Their (the Government through the State) Obligation and Not That of the Borrower.

**131.** Please note that the acts against the borrower, citizens of the United States of America is construed in law as an act against United States itself. An act that violates the laws of the United States of America is construed as an act that violates the sovereignty of the United States itself. These financial institutions are governed by the laws of the United States of America, when these financial institutions collaborate, conspire, arrange to violate the laws of the United States of America, the rights of **the People** of the United States of America, they have caused damage not only to the public interest, public perception, but also to the national interests and must be held accountable.

**132.** Under the March 9, 1933 act and subsequent acts the United States of America Treasury Secretary is responsible for receiving all obligations of the United States, and that the financial institutions already have a mechanism in place that serves as a remedy for redeeming government obligations.

## X. Tender of Payment Offer Will be Presented in several Form(s):

**133.** The law requires that payment be tendered with respects a valid lawful debt obligation, it has always been our plan to tender payment to the defendants and/or the government organization for these "government obligations" in the form(s) as defined and prescribed in law once the defendants have provided proof that the loan was lawful, provided consideration, and have validated the alleged debt and provided verification of such validation as requested and stated in the defaulted presentments.

a. Pledging and paying the security "to the order of the United States of America without recourse", (7 CFR 1901 subpart K), is a standard practice, and it is required when dealing with obligations of the United States.

## XI. Mortgage Insurance

**134.** Each mortgage and/or conventional loan must be supported by or company with mortgage insurance in order to receive the government guarantee as specified in law.

a. Each of the loan numbers and mortgages associated with this particular presentment had/has/have mortgage insurance.

**135.** The mortgage insurance is in effect a provision "to protect the lender should the borrower default", once the beneficiary or the lender notifies the borrower that they are in default, whether a **Judicial** or

non-**Judicial** state, they are by obligation of the agreement and federal provisions of law to apply for the insurance which is there "**to protect the lender should the borrower default**".

**136.** The lender is under obligation to apply for this insurance to protect the interests of the borrower. All contracts carry with them value and consideration (see: simple contract).

**137.** In each of the aforementioned instances the lender/beneficiaries have violated the agreement, and the intentions of the grant or and have elected to seek foreclosure prior to seeking claim on the insurance securing the contract.

**138.** A mortgage is supported by a note, a deed of trust is supported by insurance, a deed of trust is a security instrument which by law must be insured. Federal law requires every government guarantee note/loan or sponsored agreement to have insurance as it carries the full faith and credit of the United States government as a result of that federal guarantee. These three instruments are in-servable.

**139.** Because each Housing and associated loan and/or mortgage carries a government guarantee in one fashion or the other, making it a "*GOVERNM ENT OBLIGATIONS*" which is dischargeable through the United States treasury as prescribed in law.

**140.** The financial institutions, the lenders, the beneficiaries are applying for the mortgage insurance after the foreclosure, and because they choose to apply for this insurance after the foreclosure and not prior to the foreclosure they are in violation of the agreement.

**141.** Mortgage insurance is in place "to protect the lender should the borrower default", once the lender notifies the borrower that they are in default, the lender itself has notice, which starts the statue limitations for the lender to apply for the "default" insurance.

**142.** The lender makes an executive decision to delay applying for the insurance, and once they do receive compensation on any level respecting the insurance and the application thereto and or thereof, they are obligated to credit the borrower's account equal to the amount of credits and/or compensation they receive respecting that account even if done years later.

**143.** The record keeping is for the account and not the borrower, and because this is an issue about an account any credits received as a result of a charge off, a write off, or any payments associated with the account must be adjusted per the rules of accounting. We challenge the practice of failing to make such adjustments and the courts lack of diligence and redressing and not requiring these financial institutions who claim that a debt is owed, to prove their claim. To provide financial records documenting the

comprehensive accounting which they as custodians of record must keep. We further challenge the so-called presumption of law standard as a violation of the rights to every citizen in America, the Constitution, and due process. For the placing of non-verified, non-validated information on the record by these financial institutions, i.e. statements of accounting, and receiving them as if they are factual evidence claiming that it needs to be rebutted is preposterous. A lie need not be rebutted, and the courts are supposed to rely on fact and conclusions of law and not theory. Presumption of law relies on theory and or assumptions and/or lies, is unconstitutional, it is not delegated under any authority to the courts or to any other administrative venue, and we challenge such application continuously and do so on behalf of the United States, the people of the United States of America, and in the interest thereof.

## XII. Non-Tax Payer Suit and Challenge

**144.** We also challenge the fact that the courts engage in "commercial business" activities and by doing so abandon any claim to sovereign capacity, and lacked the jurisdiction, the standing, and the capacity to hear matters of a **Judicial** nature, i.e. depriving people of the right to redress, the right to access the court, their right to remedy- making such practice unconstitutional.

**145.** Presumption of Law which violates the principles of law and the principles of due process and equal protection. Presumption of law is not based on any solid or sound principle of law, it is a manipulation and exaggeration of the Maxim "An Unrebutted Affidavit Stands As True**",**" presumptions have no place in law, and is unconstitutional in that the provisions of the presumption is not supported by fact, but on practice that has been put into effect without any legal foundation.

**146.** The use of presumption in law in suits is unconstitutional because the **Jury** is impaneled not to hear theories but to hear facts, to hear law and come to a conclusion and or determination based on the facts and or law presented to them during a trial for which they have been duly impaneled.

**147.** Presumption the law presumes that a **Jury** does not have the right to be reminded of their duty respecting **Jury** nullification, however, the very same presumption says that a **Jury** can be reminded of their duty, their oath, their obligation by a judge or a quote unquote prosecutor. This is a violation of the equal protection of law act/clause.

**148.** If the **Jury** gets to be reminded of their duty, they can be reminded of the fact that no one may be tried or convicted in the United States of America of any crime unless they have received due process of law. This due process was never to be proportional, because failure of the process on the part of government is a denial of the government to **the People** of their right to be protected by government, even if it is an accused party.

**149.** Government is in place to aid in redressing the issues of each party the accused and the accuser, the government cannot aid wrongdoer which equates to the fact that the government and/or its representatives and/or its purported representatives cannot aid in wrongdoing. To deny a party the right to due process be it the **Jury**, be it the accused, be it the accuser amounts to a failure of government and a violation of their duty of care and the Constitution for which they have pledged a duty to uphold in all of its aspects.

**150.** We also hereby bring forth our challenge against the government and its agencies charging fees on top of the fees collected as a result of taxes.

**151.** For instance, government agencies charge fees for individuals accessing a service provided by the government and/or its agencies and/or its organizations. This fee is included in the annual budget for that particular agency, organization, department, entity.

**152.** In contacting The Administrative Office of the United States Courts, we have been informed that that office is responsible for administering the budget for the courts of the United States. These courts include in their budgets all of the fees and services associated with their prescribed duties, giving every citizen of America the right to challenge the court requesting additional fees be paid for the very same services that have already been <u>accounted</u> for. We know that the court and the administrative agencies do not appreciate challenges and/or claims such as those that are contained within this presentment, and will do everything in their power to prevent valid challenges to the aforementioned. We forever say and state that we have a right to present this information to a **Jury** and have them make a legal determination based on the facts, as they are duly qualified to do so in that "ignorance of the law is no excuse", they are impaneled with the understanding that they know what the law is and can make an informed decision based on the facts presented.

**153.** It is a violation of the fundamental principle of double jeopardy to be charged the same fee twice for the same services being offered by the government. This affects the public interests, affects public policy, and when it is involving government it has an **in-direct** effect on the administration of the services provided by government.

**154.** Government is put in place to represent the interest of **the People**, **the People** of whom the presenters are members of that national community, cannot suffer harm as a result of the government carrying out its duties and responsibilities. This is a violation of the Declaration of Independence, a violation of the Northwest Ordinance, of due process, of equal protection of law, and of basic fundamental principles of decency. In fact, it is a violation of law for these government agencies to charge an additional fee

without specifying specifically what that additional charge is for.

**155.** It is also a violation of law for these governmental agencies to be exempt from fees when they are registered as private corporations. Corporations asked for equal right and the Supreme Court has recognized the rights of corporations to have constitutional rights. With that being the case corporations engaged in commercial business activities, corporations that are privately held and privately owned as well as privately traded cannot represent government, as in the United States of America the United States government cannot be privately owned, cannot be private.

**156.** The fees charged by these agencies in addition to the taxes received for the services rendered, amounts to double taxation which is a violation of the principles set out in the foundational blueprint for the Constitution of the United States of America:

"Art. 4. The said territory, and the States which may be formed therein, shall forever remain a part of this Confederacy of the United States of America, subject to the Articles of Confederation, and to such alterations therein as shall be constitutionally made; and to all the acts and ordinances of the United States in Congress assembled, conformable thereto. **The inhabitants and settlers in the said territory shall be subject to pay a part of the federal debts contracted or to be contracted, and a proportional part of the expenses of government , to be apportioned on them by Congress according to the same com m on rule and measure by which apportionments thereof shall be made on the other States; and the taxes for paying their proportion shall be laid and levied by the authority and direction of he legislatures of the district or districts, or new States, as in the original States** , within the time agreed upon by the United States in Congress assembled.

**157.** The legislatures of those districts or new States, shall never interfere with the primary disposal of the soil by the United States in Congress assembled, nor with any regulations Congress may find necessary for securing the title in such soil to the bona fide purchasers. **No tax shall be imposed on lands the property of the United States; and, in no case** , (*if the ownership of all property is in thestate by virtue of government how can the government assess tax when they were/are/have been prohibited from doing so*?), shall nonresident proprietors be taxed higher than residents. The navigable waters leading into the Mississippi and St. Lawrence, and the carrying places between the same, shall be common highways and forever free, as well to the inhabitants of the said territory as to the citizens of the United States, and those of any other States that may be admitted into the confederacy, without any tax, impost, or duty therefor."

**158.** As can be seen the imposition of taxes cannot be arbitrary, and the assessing a fee for that which is already compensated for or accounted for through taxation amounts to double taxation, which makes it unconstitutional by principal and by law.

## XIII. Damage claims and Relief Sought

**159.** As is true the government through its agents has captured/Seized the ability and right of **the People** to discharge their debts. Have failed to provide a remedy for providing for the necessities of life. Have issued script that has no value, despite there being a remedy to provide lawful money.

***The financial institutions to a process known as bookkeeping entry credit creation*:**

**160.** 'Created upon their books, that this was standard banking practice exercised by their bank in combination with the Federal Reserve Bank another private Bank, further that there is and was no United States Law that gave the Defendant's the authority to do this.

The only excuse the bank have is that:

**161.** 'Plaintiff further claimed that Defendant by using the ledger book created credit and by paying on the Note and Mortgage waived any right to complain about the Consideration and that the Defendant was estopped from doing so.' Common-law in the Supreme Court have fully documented that the statute of limitation does not commence to run until the last overt act has been accomplished, or until the party who is thereby affected becomes aware-**'has little reality or worth unless one is informed that the matter is pending and can choose for himself whether to appear or default, acquiesce or contest.'** (ibid) so this legal excuse violates the standard of due process and can never be considered as a binding excuse by which to hang a defense affirmative or otherwise.

**162.** Since all the bank loaned was its credit, we can only return that of equal value our credit in the form of a bill of exchange, and an original endorsement of the original promissory note which we plan to do once evidence is provided by the defendants that the loan was lawful, provided consideration, and have validated the alleged debt and provided verification of such validation.

**163.** Any and all debts associated with the property are hereby accepted on behalf of the United States of America and discharged as a result of the banking holiday and THE NATIONAL EMERGENCY BANKRUPTCY EMERGENCY ECONOMIC RELIEF ACT OF MARCH 9, 1933 which is still extant.

**164.** By tendering payment in the fashion aforementioned above the obligation will be fulfilled, and the financial institutions as well as the Department of Agriculture, and/or the Department of the Treasury cannot refuse such tender, as they were/are "GOVERNMENT OBLIGATIONS" of the United States.

**165.** We're back to the question and the issue of whether or not in applying for a loan one can be told that if they do not waive their rights they cannot get the loan that is federally sanctioned? The Supreme Court of the United States of America otherwise known as the constitutional "One Supreme Court" has decided that the Northwest Ordinance act of 1787 is a constitutional act, and is still in force.

**166.** The Northwest Ordinance act is cognizable by every jurisdiction in the United States of America, in fact it also recognizes the "common-law right" to "a common Law trial" under "***Common-Law*** jurisdiction".

> "There shall also be appointed a court to consist of three judges, any two of whom to form a court, who shall have a ***Common-Law*** jurisdiction"

**Every state in the union is bound by this particular act:**

**167.** In one breath the Supreme Court said that the Northwest Ordinance was Constitutional:

> "the Act of Congress of August 7, 1789, which adopted and continued the Ordinance of 1787 and carried its provisions into execution, with some modifications, which were necessary to adapt its form of government to the new Constitution. And in the states since formed in the territory, these provisions, so far as they have been preserved, own their validity and authority to the Constitution of the United States and the constitutions and laws of the respective states, and not to the authority of the Ordinance of the old Confederation."

**168.** There is one huge conflict the Northwest Ordinance act was relied upon in the formation of the Constitution, the reliance on the act was in compliance with the requirements of the Northwest Ordinance act:

> "And, whenever any of the said States shall have sixty thousand free inhabitants therein, such State shall be admitted, by its delegates, into the Congress of the United States, on an equal footing with the original States in all respects whatever, and shall be at liberty to form a permanent constitution and State government: Provided, the constitution and government so to be formed, shall be republican, and **<u>in conformity to the principles contained in these articles</u>**; and, so far as it can be consistent with the general interest of the confederacy".

**169.** Without such compliance to the Northwest Ordinance the Constitution for the United States of America could not have been brought into force. Remember the Northwest Ordinance was enacted by Congress under their sovereign authority:

> "Done by the United States, in Congress assembled, the 13th day of July, in the year of our Lord

1787, and ***of their sovereignty*** and independence the twelfth."

**170.** It is for the very reason that **Congress enacted the Northwest Ordinance under its sovereign authority** that the Supreme Court could not declare the act to no longer be enforceable without an actual act of Congress. For only Congress under the Constitution for which the Supreme Court said was supposed to have nullified the act, could make or repeal a law- see the first article of the United States of America Constitution.

**171.** There is no law whereby the intentions of Congress were ever placed on record to repeal the Northwest Ordinance act, which was perpetual and binding on all states added to the union. That includes the state of Arizona, the state of Colorado, the state of Nevada, and this great state of **New York**. All of their constitutions conform to the requirements of the Northwest Ordinance, which means that it and the principles by which it was created were indeed perpetual.

**172.** No provision is made and or alluded to where habeas corpus can ever be suspended, you cannot convert a right to a privilege. As mentioned this was a ***Common-Law*** instrument, brought forth under ***Common-Law*** and the principles of ***Common-Law***, and that is what is still binding because the United States of America Constitution which was created as a result of that blueprint, acknowledges ***Common-Law***.

**173.** That these policies that have been the policies of these financial institutions since at least 1963 affect the ability of –

"The power of the Congress to regulate the value of the money of the United States, and **are inconsistent with the declared policy of the Congress to maintain at all times the equal power of every dollar, coined or issued by the United States, in the markets and in the payment of debts**." THE ACT OF JUNE 5, 1933.

**174.** We seek a declaration by a common-law **Jury** in the same manner as the declaration was issued and the aforementioned ***Common-Law*** case, that the bank by issuing their own credit and or bookkeeping entry create no value, give no consideration and are only due that which they gave in the first instance, credit created on the book entry accounts of the borrower.

We further seek **$2,500,000.00** in letters of credit from each of the defendants who have the capacity for issuing such letters of credit, and **$2,500,000 in US Dollars** split between each defendant who are financial institutions as defined by law.

**175.** To be noted that each of these aforementioned financial institutions have joined together and have pled guilty to violating law with respects to the borrower lender relationships associated with the accounts

and the records they act as custodians of. We say that that has happened in this instance with respects to the plaintiff's accounts, and that each of the properties had ***Mortgage Foreclosure*** protection insurance against default.

**176.** These financial institutions have funds from the government and possible other insurance claims and failed to credit the borrower's account as required by law, resulting in unjust enrichment and damage to the Borrower and the National debt damaging the nation and the Public. We seek a judgment for the return of these funds to the borrower's account, payable to the borrower, a penalty for this constructive fraud, and repayment to the governmental insurance company who have also been made a victim by the actions of the defendants who purport to be financial institutions/lenders.

## XIV. Statutorial and Constitutional Challenges

**177.** For the if Congress has admitted in the record clearly documents that they have that they acted without delegation of authority, extending and conferring their power to the executive branch or any other branch of government; stripping away rights retained and reserved to **the People**, and that makes their actions unconstitutional and all of the acts, federal laws, and subsequent statutes unconstitutional and void of effect. We hereby challenge those acts from their inception to the current day as such.

**178.** The March 9, 1933 Act Otherwise Known As the EMERGENCY BANKING ECONOMIC RELIEF ACT, this act was enacted by Congress stating that there was a financial emergency. Initially the **financial emergency or banking** holiday proposed by the president at the time (see: Presidential Proclamation's 2038, 2039, and 2040), was only to last four days, however, as we have discovered from Congress that emergency which has suspended normal banking activities is still ongoing with no end in sight for the foreseeable future.

**179.** This is a violation of the constitutional rights of **the People** with respects their remedy to earn a living, support themselves, to obtain housing, to obtain the necessities of life, and to pursue happiness, all violations of the constitution.

**180.** Constitutional provisions and powers to regulate currency was the extent of the **LIM ITED** congressional power. There is no provision in the Constitution which permits Congress to delegate its authority to regulate the currency to any organization including private organizations such as the defendants, the Federal Reserve, and the Federal Reserve banks.

**181.** This is precisely and exactly what has happened, the financial institutions and the banks to include the Federal Reserve Bank has invented this unconstitutional policy, this practice of creating book keeping

entries which they equate to as money. They are creating money by way of bookkeeping entries in violation of the Constitution and the delegation of authority specified in the Constitution making this practice unconstitutional and illegal. They have never had the jurisdiction for engaging in such a practice and they continue this Practice against the interest of the Public and **The People** of the United States of America.

**182.** We challenge this act and the practices that have come about as a result of this act as unconstitutional. We say that Congress has at no time been given the authority to delegate their power and or conferred their authority to any other branch of government or any private corporation.

**183.** The FEDERAL EMERGENCY ECONOMIC RELIEF ACT, otherwise known as the May 12, 1933 Act a sister act for the emergency banking economic relief act of March 9, 1933.

**184.** This act permitted for the government providing for the necessities for all of **the People** who were affected by the emergency.

**185.** As noted above this policy and/or law and/or federal act only provided for limited amounts, despite the fact that the emergency was only said to be temporary and not to last for now 85 years.

**186.** Government in being given the ability of regulating **the People** and the laws of the nation must provide a remedy for **the People** when they affect their rights, and/or their properties, that is not the case at present.

**187.** The government did not provide for and or take into consideration inflation in the cost-of-living. As noted since the government declared itself to be insolvent, they did this to protect the interest of the nation. In so doing, the government must follow through on that responsibility, to protect the interests of the nation.

**188.** **The People** of the nation make up the common community which are under the protection of government. **The People** have received little in the way of protection when it comes to the necessities of life, and money.

**189.** This federal act says that the government is to provide money for **the People**- the Administrator is authorized to make grants to the several States to aid in meeting the costs of furnishing relief and work relief and in relieving the hardship and suffering caused by unemployment in the form of money."

**190.** Yet the government does not provide money to **the People**, remember they themselves have documented the fact that legal tender in the form of Federal Reserve notes have no value, which means that it provides no relief.

**191.** The government does not provide any other form of currency to **the People** to utilize in order for them to care for their necessities. and in relieving the hardship and suffering caused by unemployment in the form of money, service, materials, and/or commodities to provide the necessities of life to persons in need as a result of the present emergency, and/or to their dependents, whether resident, transient, or homeless.

**192.** The administrators who purportedly represent the government has failed to provide relief and/or remedy to **the People**, they have stated what the remedy would be, but it failed to provide the remedy, and thus for failing to do so we challenge their failure and the act itself for its lack of effectiveness as unconstitutional.

**193.** As we have seen the United States Congress has admitted that their actions in 1933 associated with the March 9, 1933 act were unconstitutional in that they did not have the constitutional authority to delegate and/or confer their power on any other branch of government. In 1973 through 1976 a Senate report and the **"NATIONAL EMERGENCY ACT"** further documented this aggrieves encroachment upon the sanctity of the actual constitutional powers, and the limitations of government.

## XV. Injunctive Relief Due to and as a result of ongoing Irreparable Harm-

**194.** The defendants have acted in violation of law, in that they have done the impossible within the borders of the United States, they have created currency. The issuance of **"BOOKKEEPING ENTRY CREDIT"**, fits the very definition of currency as defined by congressional acts of Congress, as they equate to monies of the United States. Congress was very specific in the act of June 5, 1933, 'that such obstructs the ability of Congress to regulate the currencies of the United States at all times'.

a. Congress has stated that such acts are a violation of the public trust, public policy, and are invalid.

**195.** The defendants cannot produce a single law and/or code which would permit them to create monies of the United States, and to lend these monies at interests without it violating the prohibitions of Congress and the Constitution against such even if they could, they failed to disclose what they were intentionally lending in violation of **law (TILA)**.

a. This policy of creating **"MONIES ON ACCOUNTS"**, lending **"BOOKKEEPING ENTRY CREDIT"**, is the crux of this matter. For we all know that the financial institutions by doing this "intentionally created fraud in the factum" and withheld from plaintiff... "Vital information concerning said debt and all of the matrix involved in making the loan". ***Deutsche Bank v. Peabody,*** ***866 N.Y.S.2d 91 (2008). EquiFirst, when making the loan, violated Regulation Z of the Federal Truth in Lending Act- 15 USC §1601 and the Fair Debt Collections Practices Act 15 USC §1692***

**196.** We hereby request the court enjoin each and all of the defendants from seeking to collect any further on any account until they comply with the requirements of law to provide a complete comprehensive accounting as to the debt claimed owed.

a. That they further document that they have fully complied with the law and that they have completed every assignment within the timeframe for such completion.

b. That they have filed a transfer of ownership for every transfer or change of assignment as required by **New York** statute, and that it was properly filed with the tax assessor's office for the area where the property is located.

c. That they provided clear and unambiguous language as to the fact that they were lending not US dollars but "BOOKKEEPING ENTRY CREDITS", and that such was agreed to by the borrower having full knowledge of the circumstances and "vital information concerning said debt and all of the matrix involved in making the loan".

d. That the defendants provide proof of all of the tax credits, and other associated credits with the specific accounts, the benefits, the write-offs associated with the specific accounts, and of their applying such credits and/or benefits and or forgiveness to the specific accounts to offset the amount claimed payable and due.

aa. Such would have to be the case in order for them to not be accused of unjust enrichment, and we bring forth our claim that each of the defendants have committed fraud, having failed to apply the credits received to the balance of the account, when claiming that they had and/or will suffer a loss.

ab. Their claim to either the IRS and other government institutions including the federal reserve was done under penalty, and we must ask this Court to hold them accountable for trying to defraud the American public and the American government, and doing so being financial experts of both financing laws and policies and procedures.

e. We must ask that each of the defendants be enjoined against collecting on any other claim unless they can prove that they have complied with the law, have followed the Administrative Procedures Act, the Non-judicial Foreclosures Act, the Home Foreclosure Procedures Act.

a. Please note that although we are challenging the Administrative Procedures Act, The Non-judicial Foreclosure Act, the Home Foreclosure Procedures Act, the act of March 9, 1933; and the Housing Administration's Act, until our challenge has been determined and decided upon these particular defendants are required to abide by these acts to the letter.

f. The system has placed the onus on the borrower to prove each and every point, however, that's not what the law requires- for instance the trustee company known as **THE BANK OF NEW YORK MELLON, as Trustee for the Certificate Holders of CWALT Inc., Alternative Loan Trust 2006-0A11 mortgage pass-through certificates 2006-0A11,**

f/k/a THE BANK OF NEW YORK MELLON, ALTERNATIVE LOAN TRUST 2006-0A11 and others associated with them, having made a claim that they issued or maybe issuing a Notice of Default. Yet that notice comes with an opportunity for a borrower to contest such a claim.

a. On or about **February 6, 2017** and **April 14, 2017** presentment was sent **(see…Exhibits - A)** to each of the defendants regarding the alleged debt, to the present day none of the defendants have responded and/or properly responded to the more than 2 communications regarding that alleged debt and any claim that there was a debt payable and due.
b. The Supreme Court has held that the hearing does not have to be fixed in form, but that an individual be given an opportunity to contest. The administrative process allows a party to contest via written communication, which the plaintiffs did, and the defendants ignored it as if this was not a right but a privilege.
c. After not receiving a response or a proper response from the defendants the plaintiffs are proceeding to file a common-law suit/complaint in the District Court of the United States of America at **Central Islip, New York**.
d. The defendants further received signed presentments by **Mario E. Castro**, respecting the estate of **MARIO E. CASTRO** which is being placed on the record as well **(see…Exhibits - A)**. The defendants (Trustee, Servicer, Lenders, Financial Institutions and Attorneys) are a Debt Collector as described in the FAIR DEBT COLLECTIONS PRACTICES ACT, the FEDERAL DEBT COLLECTION PROCEDURES ACT as they have also purchased this debt while it is/was in default which also makes them debt collectors and have violated these acts on more than 2 occasions, and we seek sanctions as well as penalties for doing so.

**197.** We further request that the defendants be so enjoined against any further actions against the plaintiffs until this matter is concluded, and they have proven by preponderance of evidence that they have complied with the laws and regulations for the collecting of the debt within the borders of the Great State of **New York**, the **FAIR DEBT COLLECTIONS PRACTICES ACT**, and due process of law.

**198.** The defendants by their actions have caused irreparable harm, including failure of ability to concentrate at work and perform daily work activities, lack of sleep, stress, family issues, family stressing, medical issues due to stress (evidence of medical visits to hospital shall be produced as evidence at trial), harassment/threats of unlawful foreclosure actions, negative marks on credit reports as they were required to cease all collection efforts until the debt has been validated and provided verification of the debt and proof that they are the holders in due course of my wet ink signature note in violation of policy and law, denying the plaintiffs the right to due process and equal protection of law as these damages are continual and ongoing and they are still damaging plaintiffs credit til this day damaging his credit worthiness and ability to obtain any other type of credit to build and create a future for himself and family and livelihood.

**199.** As has been proved, and the record will further and continually document we have exhausted our

**Administrative Remedies** despite the fact that the Supreme Court of the United States has made it clear that it is not necessary for one to exhausted their "Administrative Remedies" in order to seek Judicial access and Affirmative Relief as we are requesting/demanding affirmative relief in this matter.

**200.** We have also documented the fact that we have suffered irreparable harm, and this despite the fact that we have complied every aspect of the law, including communicating with the defendants as required by statute, only to have them ignore each and every communiqué.

**201.** We have satisfied the burden required for having injunctive relief issued, and an Enjoinment against any further associated actions by the defendants respecting the respective accounts.

## XVI. Declaratory Judgment Demand

**202.** We seek a declaratory judgment from this body as we have proven by congressional intent and by the federal registry incorporating that Congressional record, that it was the intent of Congress to sidestep the delegation of authority clause, the separation of powers clause of the United States of America Constitution, and delegate their regulatory and other powers upon the executive branch of government.

**203.** That 'the United States Congress has admitted its intent to seize all of the property of all of the people of the nation and to attach a mortgage to each one of these properties conferring all ownership of all property to the state by virtue of government i.e. United States, this was an unconstitutional land grab, and violate the right to property clause, and denied the people of the United States the right to due process, for at no time were they given an opportunity to choose whether or not they were going to surrender a secured right i.e. "**THE RIGHT TO PROPERTY**". The Government is to represent the people, The Government could never seize property from the people, that will equate to the people seizing their own property, and if that's the case the bank/financial institutions still have no standing.

**204.** But here the banks/financial institutions are making claims that they are owed and or are due monies for loans that did not include consideration or value in the first instance. Under the terms simple contract, every contract must include value and consideration, without value and consideration a contract is deemed void. We seek A Declaratory Judgment from this Court, that will stipulate that if the financial institutions cannot prove that the contract included unambiguous language that was conspicuous, detailing that the loan was not to be in coins or currencies of the United States i.e. US dollars, but was to be in **Bookkeeping Entry Credit**, and that the origin of the credit was from the banks Bookkeeping Entry, of which did not exist prior to the transaction. And that this credit issued by the bank had a value equal to the value presumed by the initial use of the "$" sign or symbol for the "US dollar" which is the

official world default currency.

**205.** If it is held that the financial institutions and banks failed to reveal this crucial information, as required by the Truth in Lending Act, they have no claim, nor do they have any standing respecting a **deed of trust** and A Right to Foreclose.

## XVII. Conclusion

**206.** Based on the law, the terms of the Pooling and Service Agreement, the failure to show the proper chain of endorsements, and the arguments contained herein, Plaintiff moves this Court to permanently enjoin the Defendants (and its/Their successor-in-Interest) from foreclosing on the associated properties because they have failed to make the required showing that they are or ever were or ever could be the holder of the mortgage promissory notes. They have not perfected Title and or Claim as required by the Laws of the Common Law State of **New York**, and Due Process.

**207.** For quite some time there has been this battle with financial institutions, the courts were supposed to act as referees, making sure that the parties played fair, making sure that the contracts were in order. However, what has happened as of late is that the courts have been ignoring the letter of the law, have been ignoring the basic and most fundamental of arguments, that the individual claiming a debt is owed must show fundamental proof of such debt i.e. the original contract with an original signature. This has not been done in this case, we've asked for a copy of the original contract, certified as a copy of the original contract as it exists this day, without alterations for which the defendants have failed to produce.

a. Is a basic principle in law that a notarized document must remain unaltered, any alterations on the document after the notary seal the document (remember the seal is to prevent any further trespass on that document, and to alter the document is considered "trespass on the notary seal), invalidates the document. This is the same premise which is understood under the full faith and credit clause, which documents the seal of a government agency and/or office and the weight that it carries. If the document is altered, the validity of the document is now called into question.

b. In this matter we know for a fact that each of the contracts have been altered, they're not altered because contracts can be altered and still remain valid under the restatement of contracts principles, they are altered by placing an endorsement, which allows the institution who places the endorsement to receive the credits promise by the United States, because that instrument represents a "**GOVERNMENT OBLIGATIONS**", and at such it becomes an obligation of the United States treasury.

aa. There have been some issues as to what is a "government obligations"?

A review statute will document that, notes, bills, stamps, mortgages, checks, drafts, and the like are all construed as government obligations **(see 18 USC 8; and 31 USC for further clarification).** So if or when the Defendants and the courts of **NEW YORK** may state that the individual's bill of exchange may amount to **gobbledygook,** however let's take a further look at what was actually said:

I. The court stated the following "**We have also reviewed the sources identified in the Bill as giving rise to the Secretary's obligation to honor the Bill, and find that they create no such obligation**". – [However, please take note that the issue isn't whether or not they reviewed the bill, or the bill stated there was an obligation, it's whether or not the law recognizes that bill as an obligation. The bill was specifically associated with the mortgage note, notice the following:

II. Attached to the Bill were instructions stating that the Bill was a negotiable instrument that could be processed by mailing it to the United States Treasury Department and that plaintiff had established a "Personal UCC Contract Trust Account" with the Treasury Department. McElroy, 134 Cal. App. 4th at 390,______________P.3d at _, 36 Cal. Rptr. 3d at 177. The Bill expressly stated that the Secretary's obligation to honor the Bill arose "out of the want of consideration for the pledge and by the redemption of the pledge under Public Resolution HJR-192, Public Law 73-10 and Guaranty Trust Co. of N.Y. v. Henwood, 307 U.S. 247, 59 S. Ct. 847, 83 L. Ed. 1266 (1939)." McElroy, 134 Cal. App. 4th at 392, ___P.3d at___, 36 Cal. Rptr. 3d at 178-79. Defendant refused to process the Bill and subsequently sold plaintiff's property at a foreclosure sale. McElroy, 134 Cal. App. 4th at 390,___P.3d at____, 36 Cal. Rptr. 3d at 178.

On review, the court found that the Bill was not a negotiable instrument because it was not made "payable to order or to bearer" as required by the Uniform Commercial Code and that it was not a check because it was not drawn on a bank. McElroy, 134 Cal. App. 4th at 392,___________________________P.3d at _, 36 Cal. Rptr. 3d at 179. The court further found that, although the Bill purported to identify the source of the Secretary's obligation to honor the Bill, the cited sources did not establish any such obligation. McElroy, 134 Cal. App. 4th at 392-93,______________P. 3d at______, 36 Cal. Rptr. 3d at 179. Therefore, **the court concluded that the Bill was a "worthless piece of paper" that amounted to no tender at all and found that the foreclosure was proper**. McElroy, 134 Cal. App. 4th at 393-94,____________________________P. 3d at _, 36 Cal. Rptr. 3d at 179-81.

c. Ladies and gentlemen of the jury, you are the ones who have to decide what the law says, now the individual's bill did not include the statement "**pay to the order of the bearer**", and because that was the premise by which he had produced the bill, was that he was operating under the Uniform Commercial Code negotiable instrument section, it was not a negotiable instrument because it did not include the phrase 'payable to the order of the bearer' or the like.

d. However, this did not take away from the fact that it was indeed associated with a "**GOVERNMENT OBLIGATIONS**" i.e. a mortgage, and he was attempting to discharge **GOVERNMENT OBLIGATIONS**, as prescribed by statute all **GOVERNMENT OBLIGATIONS** are the responsibility of the United States treasury as fiscal officers for the United States and the obligations associated

thereto. It is not the court who was to determine whether or not it qualified as an obligation of the United States, but it was the United States treasury who was authorized to do so and as one of the **PERSONS** documented in that law i.e. the March 9, 1933 act, the individual was correct in ordering, requesting and or asking that the item be directed to the U.S. Treasury Sec. at the United States Treasury Department. For clarification and understanding of this fact note the following:

1. During such holiday, the Secretary of the Treasury ... is authorized and empowered (a) to permit any or all of such banking institutions to perform any or all of the usual banking functions, (b) to direct, require or permit the issuance of clearing house certificates or other evidences of claims against assets of banking institutions, and (c) to authorize and direct the creation in such banking institutions of special trust accounts for the receipt of new deposits which shall be subject to withdrawal on demand without any restriction or limitation and shall be kept separately in cash or on deposit in Federal Reserve Banks or invested in obligations of the United States.
2. As used in this order the term "banking institutions" shall include all ... or persons, engaged in the business of receiving deposits, making loans, or transacting any other form of banking business.
3. As you can see it was never intended for the Court to conclude whether or not this individual could direct and/or determine whether or not the particular instrument was an obligation of the United States, since the statute has made it perfectly clear-

> "Under the new law the money is issued to the banks in return for **government obligations** ... The money will be worth 100 cents on the dollar, **because it is backed by the credit of the nation. It will represent a mortgage on all the homes, and ... of all the People** of the nation." Congressional Record, March 9, 1933 on HR 1491 p. 83. These are the actual words of Congress indicating the actual intention, and so it is the intent that is implied by the general principles of statutory interpretation that must be considered.

e. Since the note, once it has the endorsement **(see 7 CFR 1901 subpart K)** that includes the word pay to the order of, it constitutes a "GOVERNMENTOBLIGATIONS" i.e. negotiable instrument. As a negotiable instrument it becomes what's deemed and termed "legal tender". And per statute that now negotiable instrument which is legal tender under law is presented to **the treasury window (see 12 USC 411),** who then issues credits to the bank/financial institution usually at the par value as prescribed in law.

**208.** This is why the banks refuse to provide a full and complete comprehensive accounting of all of the

transactions associated with the account, however, they are required to file **COMPREHENSIVE ANNUAL FINANCIAL REPORTS**, and when these **COMPREHENSIVE ANNUAL FINANCIAL REPORTS**, inclusive, references, term definitions, and ledgers fully document that these financial institutions have applied to the United States treasury for reimbursement and compensation for the "**GOVERNMENT OBLIGATIONS**". The very same thing holds true with respects to the write-offs that the financial institutions perform whereby they petition for tax credit relief from the Internal Revenue Service, and in each instance never credits the account of the borrower as required by law.

**209.** We incorporate into this matter **THE COMPREHENSIVE ANNUAL FINANCIAL REPORTS**, inclusive of notes, ledgers, term definitions, and references into this matter for each of the financial institutions and the defendants associated with this matter by reference. We also incorporate the same reports respecting the Judicial Council for the State of **New York** otherwise known as **THE ADMINISTRATIVE OFFICE OF THE COURTS FOR THE STATE OF NEW YORK,** as these public agencies holding a public trust are taking advantage of the public.

## XVIII. NOTICE TO THE COURT TO ADDRESS INTERFERENCE WITH THE RIGHT TO ACCESS JUSTICE (TILA, UCC)

**210.** Plaintiff has stated sufficient claims to which relief can be granted in his second amended complaint. Plaintiff has also filed a motion under **Federal Rules of Civil Procedure. 60 (b)** as the initial order dismissing Plaintiff's complaint in part and granting in part **(Doc. 19 dated 8-30-2018)** is a void order as detail in the referenced motion. Plaintiff requests that this court seriously reconsiders their decision to dismiss with prejudice the referenced violations of law (mainly TILA) and reverse their decision as they are violating the Plaintiffs constitutional natural rights to due process, to seek redress, access to justice, and are awarding/helping wrong doers conceal fraud as Plaintiff explicitly reserves, retains and choses to exercise these rights at all times and this court is showing signs of being prejudicial to the Plaintiff in this matter if it does not consider the facts in this case, limiting his claims to enforce justice amongst wrong doers who are continually damaging Plaintiff in regards to an unlawful loan which created an unlawful debt as there are enough facts presented in this Second Amended Complaint to state a claim to which relief maybe granted. This court is showing signs of being prejudicial to the Plaintiff by placing orders that are void and are not lawful as they lack a "valid signature and seal "of the court as required by law to be a valid order of the court in their judicial capacity as referenced in the above referenced motion. Plaintiff requests that after consideration of the referenced motion that a court of original jurisdiction, i.e. common law jurisdiction, place an order to proceed with Plaintiffs

claims as they are referenced in this Second Amended Complaint not only as a reference in regards to TILA but as a violation under TILA as addressed in this Second Amended Complaint. At the moment, there are no UCC claims to be addressed in this matter but maybe in the future therefore any UCC claims should not be dismissed "with prejudice," only be dismissed "without" prejudice to avoid being prejudicial to the Plaintiff for future violations, denying him his rights to seek redress and access justice for which he choose to exercise at all times as the defendants are operating in commerce therefore the UCC applies to them and is a valid violation of law when violated and Plaintiff hereby explicitly reserves and retains his rights to bring forth these claims in the future, when violated moving forward.

## XIII. Fiduciary Obligation, Reinstatement of Trust[s], Acknowledgment Of Oath:

**211.** As mentioned previously we state again, that each of the Government officials have been appointed, nominated, and or assigned office and do so under oath. And as has been verified by America's jurisprudence, these officers exercise a position of public trust, and this public trust acknowledges their fiduciary relationship to the public. We hereby place this body, venue, its officers, agents, deputies under notice and bind you to your oath and your duties as prescribed, and demand that you act honorably, and in line with the rules of common-law.

**RESPECTFULLY PRESENTED,**

"Without Prejudice"

NON ASSUMSIT

THE BENEFICIAL OWNER OF THE CESTI QUI EQUITABLE TRUST
Mario E. Castro, Propria Persona, Sui Juris
All Natural Rights Explicitly Reserved and Retained U.C.C. 1-207/1-308, 1.103.6
c/o 419 West Hills Road, Melville, New York 11747
Ph. 917-513-7741

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c/o 419 West Hills Road, Melville, New York 11747
Ph. 917-513-7741

# JURAT

**STATE OF New York**
**COUNTY** Suffolk.

On December 3rd, **2018**, before me Jason Muriel Notary Public, personally stood **Mario E. Castro**, a natural person, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

**I certify under PENALTY OF PERJURY under the laws of the State of New York that the foregoing paragraph is true and correct.**

Witness my hand official seal.

Signature NON Assumpsit

**SEAL**

JASON MURIEL
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01MU6332858
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES NOVEMBER 09, 2019

# NOTARY'S CERTIFICATE OF SERVICE

It is hereby certified, that on the date noted below, the undersigned Notary Public mailed to:

**THE BANK OF NEW YORK MELLON, as Trustee**
**SHELLPOINT MORTGAGE SERVICING**
c/o Joseph M. DeFazio / Natsayi Mawere – AKERMAN LLP
666 FIFTH AVENUE, 20TH FLOOR
NEW YORK, NEW YORK, 10103

herein after, "Recipient, "the following in regards to case number **17-cv-4375-JS-GRB**:

1. **COPY PLAINTIFFS SECOND AMENDED COMPLAINT** (57 pages); and
2. **COPY MOTION FOR RELIEF FROM JUDGMENT/ORDER PURSUANT TO FED.R.CIV.P. 60(b)** (3 pages); and
3. **Copy of Exhibits - A** ( 36 pages including cover sheet); and
4. reference copy of this **Notary's Certificate of Service** (signed original on file) 1 page.

**by Certified Mail No.** 7018 0680 0002 3050 4406 **Return Receipt attached by placing same in a postpaid envelope properly addressed to Recipient at the said address and depositing same at an official depository under the exclusive face and custody of the U.S. Postal Service within the State of New York.**

Total of 98 pages.

Non Assumpsit
12/3/2018

Mario E. Castro a Natural Man — Date

12/3/18

Notary Public Signature: — Date:

Jason Muriel

Notary Public Print:

**JASON MURIEL**
NOTARY PUBLIC, STATE OF NEW YORK
NO. 01MU6332856
QUALIFIED IN SUFFOLK COUNTY
COMMISSION EXPIRES NOVEMBER 09, 2019

(SEAL)

Notary Public Address:

273 Walt Whitman Rd

Huntington Station NY 11746

11/9/19

My Commission Expires:

A notary public or other officer completing this certificate verifies the identity of the individual who signed the document, to which this certificate is attached, and the truthfulness, accuracy, or validity that the document attached or affixed hereto is an original copy.